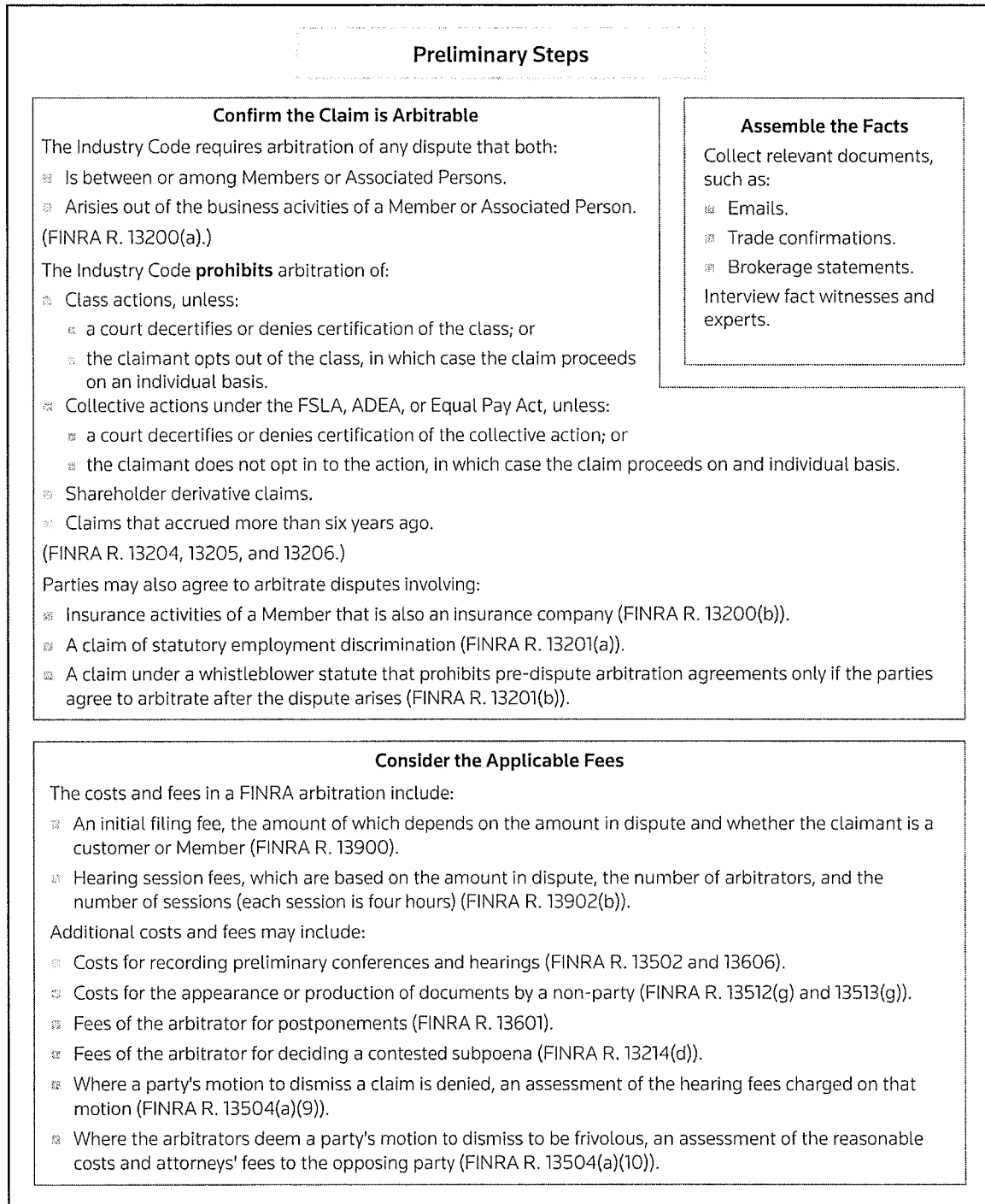


FINRA Industry Arbitration Flowchart

Code of Arbitration Procedure for Industry Disputes

For detailed information on FINRA industry arbitration, see Practice Note, FINRA Industry Arbitration: A Step-by-Step Guide.



Commencing the Arbitration

A claimant begins a FINRA arbitration by:

- ☒ Filing with FINRA:
 - ☒ a submission agreement signed and dated by the claimant; and
 - ☒ a statement of claim.
- ☒ Paying the required filing fee.

The Submission Agreement

The submission agreement is a written agreement signed by both parties agreeing to submit their dispute to FINRA arbitration. A form Claimant Submission Agreement is available on the FINRA website. A claimant does not need to have the form countersigned by a respondent before beginning the arbitration.

The Statement of Claim

The statement of claim is often a captioned pleading but it may take any form. It must:

- ☒ Identify each respondent.
- ☒ Specify the claims asserted.
- ☒ Provide the home address of the customer.
- ☒ Include a statement of the remedies sought.

(FINRA R. 13302(a).)

If the largest claim is for \$50,000 - \$100,000 and the claimant would like the case to be heard by three arbitrators, the statement of claim should include a request for three arbitrators.

Confidential information must be redacted in any FINRA filing.

Confidential information includes:

- ☒ Social security numbers.
- ☒ Financial or brokerage account numbers.

Any claim or other filing with FINRA that includes this information must include only the last four digits. (FINRA R. 13300(g).)

Filing Process

The claimant may file these documents either:

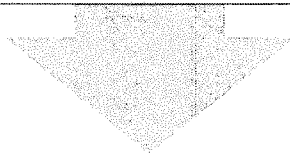
- ☒ Electronically through FINRA's secure Online Arbitration Claim Filing system (which requires first time users to register).
- ☒ In hard copy by US mail, in sufficient number to ensure there are enough copies for each arbitrator and each other party.

Deficient Claims

Once FINRA receives the claimant's submissions initiating an arbitration, FINRA confirms that the claims are not deficient. A claim may be deemed deficient by FINRA if:

- ☒ It does not include a submission agreement signed and dated by each claimant.
- ☒ The submission agreement does not name all parties named in the claim.
- ☒ The claimant does not file the correct number of copies of the submission agreement, statement of claim or supporting records for service on all respondents and the arbitrator.
- ☒ 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 provide the current address of the claimant or his representative.
- ☒ The claim contains personal confidential information, for example, a Social Security number or financial account number, prohibited under Rule 13300(g).

(FINRA R. 13307.)



Answering the Statement of Claim

Timing

After FINRA determines that the claims are not deficient, it serves on each respondent a copy of the submission agreement, statement of claim, and any additional documents filed by the claimant. Each respondent has 45 days after receiving the claim from FINRA to serve on each other party:

- ⌘ An answer to the statement of claim.
- ⌘ A signed submission agreement.

(FINRA R. 13303(a).)

The parties may agree in writing to extend the 45 day deadline for serving an answer (FINRA R. 13207(a)).

Contents

The answer responds to the factual allegations contained in the statement of claim. It may be a captioned document or it may be a more informal writing.

The respondent's answer may also include any:

- ⌘ Counterclaims against the claimant.
- ⌘ Cross-claims against other respondents.
- ⌘ Third-party claims.

Any affirmative claims by the respondent must, like a claimant's statement of claim:

- ⌘ Provide the relevant facts of each new claim together with any supporting documentation.
- ⌘ Identify each third-party respondent against whom the respondent asserts a third-party claim.
- ⌘ Specify the remedies sought.

Untimely or Incomplete Answer

If a party does not timely answer a claim, the panel of arbitrators may:

- ⌘ On a motion by any party, bar the non-answering party from presenting any defenses or facts at the hearing.
- ⌘ On request by a claimant, subject the respondent to default proceedings.

(FINRA R. 13308(a).)

A party that answers with a general denial and fails to include defenses or relevant facts that were known to it at the time it filed the answer, the panel may bar that party from presenting the omitted defenses or facts at the hearing (FINRA R. 13308(b)).

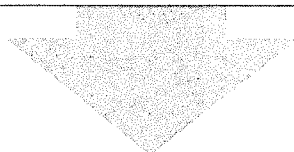
Amending the Pleadings

Before the arbitrators are appointed:

- ⌘ The claimant may amend the statement of claim at any time before FINRA serves the claim on all other parties by filing an amended statement of claim with FINRA in the same manner as the original statement of claim (FINRA R. 13309(a)(1)).
- ⌘ A party may amend any other claim by serving an amended statement of claim on all other parties and filing the amended claim with FINRA in sufficient number to ensure copies for all arbitrators (FINRA R. 13309(a)(2)).

Once the ranked arbitrator lists are due to FINRA, no party may amend to add a new party until the panel has been appointed and grants a motion to add the party (FINRA R. 13309(c)).

After the arbitrators are appointed, a party must move for leave to amend its pleading (FINRA R. 13503)).



Appointing the Arbitrator(s)

Number of Arbitrators

The number of arbitrators depends on the amount in controversy:

- ☐ A case with claims of up to \$50,000 is heard by a single arbitrator as a simplified arbitration.
- ☐ A case with claims of \$50,000 to \$100,000 is heard by a single arbitrator unless the parties agree to three arbitrators.
- ☐ A case with claims greater than \$100,000 or unspecified or non-monetary claims is heard by three arbitrators.

(FINRA R.13401.)

Composition of the Panel

The type of arbitrator (public or industry) depends on the identity of the parties.

Disputes Between Members		Disputes Between Associated Persons or Members and Associated Persons	
Single Arbitrator	Three-Person Panel	Single Arbitrator	Three-Person Panel
One industry arbitrator from the chairperson roster.	Three industry arbitrators, including one from the chairperson roster who serves as chair.	One public arbitrator from the chairperson roster.	<ul style="list-style-type: none"> ☐ One industry arbitrator. ☐ Two public arbitrators, including one from the chairperson roster who serves as chair.
(FINRA R. 13402(a).)		(FINRA R. 13402(b).)	



Selecting the Arbitrator(s)

Disputes Between Members

Single Arbitrator

Within 30 days after the last answer is due, FINRA sends the parties the names and disclosure reports of ten industry arbitrators from the chairpersons roster (FINRA R. 13403(a)(1)).

Within 20 days of receiving the arbitrator list, each party:

- ☐ May strike up to four arbitrators from the list.
- ☐ Must rank the remaining names in order of preference.
- ☐ Must send the ranked list back to FINRA, but not each other.

(FINRA R. 13404.)

Once all parties have submitted their rankings, FINRA appoints the arbitrator with the highest composite ranking (FINRA R. 13406(a)(1)). A party that fails to respond timely is deemed to have no preferences among the listed arbitrators (FINRA R. 13406(d)).

Three-Person Panel

Within 30 days after the last answer is due, FINRA sends the parties the names and disclosure reports of arbitrators as follows:

- ☐ 20 industry arbitrators.
- ☐ Ten industry arbitrators from the chairperson roster.

(FINRA R.13403(a)(2).)

Within 20 days of receiving the arbitrator lists, each party:

- ☐ May strike up to four arbitrators from the lists.
- ☐ Must rank the remaining names in order of preference.

Must send the ranked lists back to FINRA, but not each other.

(FINRA R. 13404.)

Disputes Between Associated Persons or Members and Associated Persons

Single Arbitrator

Within 30 days after the last answer is due, FINRA sends the parties the names and disclosure reports of ten public arbitrators from the chairpersons roster (FINRA R. 13403(b)(1)).

Within 20 days of receiving the arbitrator list, each party:

- ☐ May strike up to four arbitrators from the list.
- ☐ Must rank the remaining names in order of preference.
- ☐ Must send the ranked list back to FINRA, but not each other.

(FINRA R. 13404.)

Once all parties have submitted their rankings, FINRA appoints the arbitrator with the highest composite ranking (FINRA R. 13406(a)(1)). A party that fails to respond timely is deemed to have no preferences among the listed arbitrators (FINRA R. 13406(d)).

Three-Person Panel

Within 30 days after the last answer is due, FINRA sends the parties names and disclosure reports of arbitrators as follows:

- ☐ Ten industry arbitrators.
- ☐ Ten public arbitrators.
- ☐ Ten public arbitrators from the chairperson roster.

(FINRA R. 13403(b)(2).)

Within 20 days of receiving the arbitrator lists, each party:

- ☐ May strike up to four names from each list.
- ☐ Must rank the remaining names on each list in order of preference.
- ☐ Must send the ranked lists back to FINRA.

Once all parties have submitted their rankings to FINRA, FINRA appoints the arbitrators from each list with the highest composite ranking (FINRA R.13406(b)(2)).

A party that fails to respond timely is deemed to have no preferences among the listed arbitrators (FINRA R. 13402).

Arbitrator Disclosure and Removal

When the arbitrators receive the case information, they must disclose any:

- ☐ Direct or indirect financial or personal interest in the outcome of the arbitration.
- ☐ Existing or past, direct or indirect, financial, business, professional, family, social or other relationships with:
 - ☐ any of the parties;
 - ☐ any of the lawyers; and
 - ☐ anyone who the arbitrator learns may be a witness or co-panelist.
- ☐ Existing or past service as a mediator for any of the parties.

(FINRA R. 13408.)

FINRA may remove an arbitrator for conflict of interest or bias:

- ☐ Before the first hearing, at the request of a party or on FINRA's own initiative.
- ☐ After the hearing begins, only based on information that should have been disclosed and was not previously known.

(FINRA R. 13410.)

Any party may ask an arbitrator to recuse himself for good cause. The arbitrator who is the subject of a recusal request decides the request. (FINRA R. 13409.)

Pre-Hearing Matters

Initial Pre-Hearing Conference

The Initial Pre-Hearing Conference (IPHC) is held telephonically on at least 20 days' notice, to address:

- ☒ Deadlines for:
 - ☒ discovery; and
 - ☒ briefing of any motions.
- ☒ Later pre-hearing conferences, if any.
- ☒ The date, time, and place of the hearing(s).
- ☒ Communications among FINRA, parties, and the panel.

(FINRA R. 13500.)

Discovery

Interrogatories are generally prohibited. Depositions are strongly discouraged. Requests for information should be limited to identification of relevant individuals, entities, or time periods. (FINRA R. 13506(a) and 13510.)

Timing

Parties may serve requests for documents or information, as follows:

- ☒ On the claimant or any respondent named in the original statement of claim, 45 days or more from the date FINRA serves the statement of claim.
- ☒ On any party subsequently added by amendment or third-party claim, 45 days or more after FINRA serves the statement of claim on that party.

(FINRA R.13506(b).)

The party receiving a request for documents or information has 60 days, unless the parties agree otherwise, to:

- ☒ Produce the requested documents or information to all other parties.
- ☒ Identify and explain why the specific requested document or information cannot be produced within the required time and state when it will be produced.
- ☒ Object.

(FINRA R.13507(a).)

Non-Party Discovery

Subpoenas

A party in need of testimony or documents from a non-party may move for the arbitrator to issue a subpoena to the non-party. The motion, any objection to the motion and any reply by the moving party, must be:

- ⊞ Filed with FINRA, with an additional copy for the arbitrator.
- ⊞ Served on all other parties at the same time and in the same manner as on FINRA.

(FINRA R. 13512(b), (c).)

Any party that moves for a subpoena must include with the motion a draft of the subpoena for the arbitrator's signature (FINRA R. 13512(b)). Any party may object to the scope or propriety of the requested subpoena by filing and serving the objection within ten days of receiving the motion. The moving party may respond to the objection by filing and serving the response within ten days of receiving the objection. (FINRA R. 13512(c).)

Without a Subpoena

Members, Associated Persons, and employees of Members are required under the FINRA Rules to appear or produce documents if ordered by a FINRA arbitrator, without issuance of a subpoena (FINRA R. 13513). On the motion of any party, the arbitrator may order:

- ⊞ The appearance of a Member or its employee or Associated Person.
- ⊞ The production of documents in the possession or control of a Member, employee or Associated Person.

(FINRA R. 13513(a).)

A motion requesting an order for a non-party's testimony or documents, any objection to the motion and any reply by the moving party, must be:

- ⊞ Filed with FINRA, with an additional copy for the arbitrator.
- ⊞ Served on all other parties at the same time and in the same manner as on FINRA.

(FINRA R. 13513.)

Pre-Hearing Submissions and Exchanges

At least 20 days before the first scheduled hearing, the parties must:

- ⊞ Exchange all documents that they intend to use at the hearing, if not previously produced.
- ⊞ Exchange a list of witnesses they intend to call at the hearing, including for each witness:
 - ⊞ the witness's name; and
 - ⊞ the witness's business affiliation, if any.
- ⊞ If the parties jointly agree that they want the award to include an explained decision, submit that joint request to FINRA.

(FINRA R. 13514.)

The parties must file their witness lists with FINRA in sufficient number to ensure a copy for each arbitrator (FINRA R. 13514(b)). The parties do not file their documents with FINRA or the panel before the hearing (FINRA R. 13514(a)).

No party may present any document or testimony from a witness unless that party produced the document or listed the witness at least 20 days before the hearing (FINRA R. 13514(c)).

Postponement of Hearings

A hearing may be postponed:

- ☒ If all parties agree.
- ☒ By FINRA in extraordinary circumstances.
- ☒ By the panel in its own discretion.
- ☒ By the panel on motion by a party.

(FINRA R. 13601(a).)

The panel may not grant a motion to postpone if the party requesting the postponement submits the motion within ten days of the start of the hearing, unless the moving party shows good cause (FINRA R. 13601(a)).

For each postponement to which all parties agree, FINRA charges a postponement fee equal to one hearing session fee, unless the panel waives the postponement fee (FINRA R. 13601(b)(1)).

If the panel grants a postponement request that one or more parties make within ten days before the start of the hearing, FINRA charges an additional fee of \$600 per arbitrator for the postponement (FINRA R.13601(b)(2)).

The panel may dismiss the arbitration if all parties jointly request or agree to more than two postponements (FINRA R. 13601(c)).



Motions

Non-Dispositive Motions

A non-dispositive motion may be oral or written. The party making a written non-dispositive motion must:

- ☒ Serve it directly on all other parties simultaneously.
- ☒ File it with FINRA in sufficient number to ensure copies for all arbitrators.
- ☒ Serve it at least 20 days before the scheduled hearing unless the panel orders otherwise.

(FINRA R. 13503(a).)

Every motion must include a description of the moving party's efforts at resolving the matter before making the motion (FINRA R. 13503(a)).

Parties must respond to a written motion within ten days of service, unless the panel orders otherwise. Responses must be served directly on each party simultaneously and filed with FINRA in sufficient number to ensure copies for all arbitrators. (FINRA R. 13503(b), (c).)

Dispositive Motions

Motions to dismiss must be:

- ☒ In writing.
- ☒ Filed and served on all parties separately from the answer.
- ☒ Filed and served only after the answer is filed.

(FINRA R. 13504(a).)

A motion to dismiss is decided by the full panel, which must decide the motion unanimously with a written explanation (FINRA R. 13504(a)(4), (7)). The panel may grant a motion to dismiss only after it has conducted an in-person or telephonic conference with the parties on the motion, unless the parties waive a conference (FINRA R. 13504(a)(5)).

Timing of Motions Based on Eligibility

If a party moves to dismiss a claim on the grounds that it is ineligible for FINRA arbitration because it accrued more than 6 years earlier, the motion must be filed and served at least 90 days before the hearing (FINRA R. 13504(c) and 13206(b)).

Any party that responds to a motion to dismiss for ineligibility must do so within 30 days of receiving it. The moving party may submit a reply within five days of receiving the response. (FINRA R. 13206(b).)

Timing of Other Dispositive Motions

Any other dispositive motion must be filed and served at least 60 days before the scheduled start of the hearing, unless the parties or the panel determine otherwise (FINRA R. 13504(a)).

Any party that responds to a motion to dismiss must do so within 45 days of receiving it. The moving party may submit a reply within five days of receiving the response. (FINRA R. 13504(a)(3).)



The Hearing

Notice

FINRA notifies the parties of the hearing time and place as determined during the IPHC, at least 20 days before the start of the hearing (FINRA R. 13600(c)).

Attendance

The following persons may attend the hearing:

- ☒ All parties.
- ☒ Attorneys for the parties
- ☒ Expert witnesses, unless the panel determines otherwise.

(FINRA R.13602(a), (c).)

If any party fails to appear for a hearing after receiving notice of the hearing time, date, and place, the panel may proceed with the hearing and issue an award as though all parties had attended (FINRA R. 13603).

Conduct of the Hearing

The panel decides the order of proof, which generally mirrors the order of proof in court proceedings. The claimant puts on its case first, followed by the respondent. Each witness must testify under oath. (FINRA R. 13605.)

The panel decides all issues on the admissibility of evidence and is not required to follow state or federal rules of evidence (FINRA R. 13604(a)).

The Record

Every hearing must be recorded. The record may be:

- ☒ A sound recording, which is made by FINRA in every proceeding.
- ☒ A stenographic record, which any party may arrange.

(FINRA R. 13606.)

Even if a party arranges for a stenographic record, the sound recording is the official record of the proceedings unless the panel orders otherwise (FINRA R. 13606(a)(3)). The panel may order the parties to provide a transcript of the sound recording. If so:

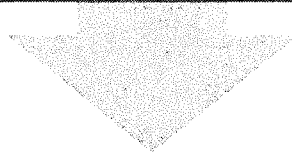
- ☒ Each party and each arbitrator must receive a copy of the transcript.
- ☒ The panel determines how to allocate the cost of the transcription.

(FINRA R. 13606(b).)

Closing the Record

The panel generally closes 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 informs the parties when the submissions are due and when the record is to close. (FINRA R. 13608(c).)

In cases where there is no hearing, the record is closed when FINRA sends the pleadings to the panel, unless the panel agrees to accept additional submissions from any party. If so, the record is closed when the last submission is due. (FINRA R. 13608(b).)



Post-Hearing

The Award

Timing and Form

The award is due within 30 business days from the date the record is closed (FINRA R. 13904(d)).
The award must be:

- ☒ In writing.
- ☒ Signed by a majority of the arbitrators or as required by applicable law.
(FINRA R. 13904(a), (b).)

Contents

The award may explain the panel's rationale and must contain:

- ☒ The names of the parties and their attorneys.
- ☒ The date of the claim and the date of the award.
- ☒ An acknowledgment by the arbitrators that they have read the pleadings and other materials submitted by the parties.
- ☒ A summary of the issues in dispute, include the type of any security or product at issue.
- ☒ A statement of any other issues resolved.
- ☒ The damages and other relief requested.
- ☒ The damages and other relief awarded.
- ☒ A statement of any other issues resolved.
- ☒ The dates the claim was filed and the award rendered.
- ☒ The allocation of forum fees and any other fees allocable by the panel.
- ☒ The names of the arbitrators.
- ☒ The number, location, and dates of hearing sessions.
- ☒ The signatures of the arbitrators.

(FINRA R. 13904(e), (f).)

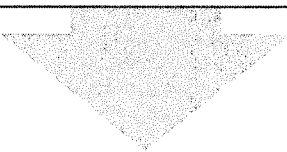
If the parties have jointly requested an explained decision award, it must explain:

- ☒ The factual basis of the award.
- ☒ The general reasons for the decision, although a discussion of legal authorities and damage calculations is not required.

(FINRA R. 13904(g).)

Service

FINRA serves a copy of the award on each party or its attorney by any convenient means, including US mail, certified mail, hand delivery, email, or facsimile (FINRA R. 13904(c)).



Post-Award Submissions

No party may submit documents to FINRA for consideration by the arbitrator(s) after the award has been rendered, unless:

- ☒ Ordered by a court.
- ☒ Requested by any party within 10 days after service of the award, in which case the request may only be based on:
 - ☒ a typographical error;
 - ☒ a computational error; or
 - ☒ mistakes in the description of any person or property referenced in the award.
- ☒ All parties agree and submit documents within ten days of either service of the award or notice that the case has been closed.

(FINRA R. 13905(a).)

To submit post-award materials, a party must make the request in writing to FINRA, explain the basis for the request, and submit the documents. If FINRA determines that the request complies with the rules, it forwards the request and documents to the panel. If the panel does not rule within ten days of receiving the request and documents, the request is deemed denied. (FINRA R. 13905(b), (c).)