

Motion to Dismiss and Eligibility Rules

SEC Approves New Motion to Dismiss Rule and Amendment to the Eligibility Rule in Arbitration

FINRA Imposes Immediate 30-Day Moratorium on Motions to Dismiss; Effective January 23, 2009

Executive Summary

Effective February 23, 2009, FINRA will implement new procedures for handling motions to dismiss in arbitration. The SEC approved a proposal to adopt Rule 12504 of the Code of Arbitration Procedure for Customer Disputes and Rule 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, the Codes) to establish procedures that will govern motions to dismiss.¹ The proposal also amends Rules 12206 and 13206 to address motions to dismiss based on eligibility grounds.

The text of the amendment is set forth in Attachment A and will apply to motions to dismiss filed on or after the effective date.

This *Notice* also announces that FINRA is imposing a moratorium on filing motions to dismiss prior to the conclusion of a party's case-in-chief from the date of this *Notice*, January 23, 2009, until the effective date of the new rules, February 23, 2009.

Questions concerning this *Notice* should be directed to Richard W. Berry, Vice President and Director of Case Administration, at (212) 858-4307 or richard.berry@finra.org; or Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, at (202) 728-8151 or mignon.mclmore@finra.org.

January 2009

Notice Type

- New Rule and Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topics

- Arbitration
- Code of Arbitration Procedure
- Eligibility Rule
- Dispute Resolution
- Motions to Dismiss

Referenced Rules & Notices

- FINRA Rule 12206
- FINRA Rule 12504
- FINRA Rule 13206
- FINRA Rule 13504

Background and Discussion

In new Rules 12504 and 13504, FINRA is adopting specific procedures to govern motions to dismiss. FINRA also is amending the dismissal provisions of Rules 12206 and 13206 (the eligibility rule) related to time limits on submissions of arbitration claims. The rules will ensure that parties have their claims heard in arbitration by significantly limiting motions to dismiss filed prior to the conclusion of a party's case-in-chief and by imposing stringent sanctions against parties for engaging in abusive practices under the rules.

Prior to the approval of the new rules, FINRA administered all motions, including motions to dismiss, under Rules 12503 and 13503 of the Codes. With the approval of the rules, Rules 12503 and 13503 no longer will apply to motions to dismiss; however, the rules will apply to all other motions filed in arbitration.

Under new Rules 12504 and 13504, motions filed before a hearing on the merits (*i.e.*, prehearing motions), or motions filed during the hearing on the merits but before a party has concluded its case-in-chief, will be referred to as a Rule 12504(a) motion.² Motions filed after a party has concluded its case-in-chief will be referred to as a Rule 12504(b) motion.³

New Rule 12206(b) will govern motions to dismiss based on eligibility grounds and will be referred to as eligibility motions.⁴

The new rules establish procedures that specifically address motions to dismiss. These procedures implement a number of changes from current motions practice, which are listed below:

- ▶ Parties must file the motions in writing, separately from the answer, and only after they file the answer.
- ▶ Parties must file any Rule 12504(a) motion at least 60 days in advance of a hearing.
- ▶ Parties will have 45 days to respond to a Rule 12504(a) motion.
- ▶ In the case of an eligibility motion, parties must file any motion to dismiss at least 90 days before a hearing, and the other parties will have 30 days to respond.
- ▶ The full panel will decide a Rule 12504(a) motion and an eligibility motion.
- ▶ The panel cannot act upon a motion to dismiss a party or claim under Rule 12504(a), unless the panel determines that: (1) the non-moving party signed a settlement and release, or (2) the moving party was not associated with the account, security, or conduct at issue.

- The panel cannot act upon a motion to dismiss a party or claim under Rule 12206(b) unless the panel determines that the claim is not eligible for arbitration because it does not meet the six-year eligibility requirement.
- If a party files a motion to dismiss on multiple grounds, including eligibility, the panel must decide eligibility first. If the panel grants the motion on eligibility, it must not rule on any other grounds for the motion.
- The panel must hold a hearing before it grants a Rule 12504(a) motion, unless the parties waive the hearing.
- If the panel grants a Rule 12504(a) motion, the decision must be unanimous and be accompanied by a written explanation.
- If the panel denies a Rule 12504(a) motion, a party may not re-file it, unless specifically permitted by panel order.
- If the panel denies a Rule 12504(a) motion, the panel must assess forum fees against the party who filed the motion.
- If the panel deems a Rule 12504(a) motion frivolous, it must also award reasonable costs and attorneys' fees to the party who opposed the motion.
- If the panel determines that a party filed a motion to dismiss under Rules 12206(b) and 12504(a) in bad faith,⁵ it may issue other sanctions under Rules 12212 and 13212 of the Codes.

The following questions and answers provide more detail on the purpose of the new rules and how they will be applied.

What is a motion to dismiss?

A motion to dismiss is a request made by a party to the arbitrator(s) to remove some or all claims raised by a party filing a claim. Currently, motions to dismiss may be filed at any stage of an arbitration proceeding, but they are often filed before a hearing is held. If the single arbitrator or panel⁶ grants a motion to dismiss before a hearing is held (a prehearing motion), the party filing a claim loses the opportunity to have his or her arbitration case heard by the arbitrator(s).

Why are the rules necessary?

FINRA received complaints that parties were filing prehearing motions routinely and repetitively in an apparent effort to delay scheduled hearing sessions on the merits, increase customers' costs, and intimidate less sophisticated customers. As a result, FINRA believes customers are spending additional resources to defend against these motions, increasing the costs and processing times of the arbitration process.

FINRA also learned through an independent study that the number of motions to dismiss filed in customer cases had begun to increase over a two-year period starting in 2004. Even though most motions to dismiss are denied, FINRA became concerned that, if left unregulated, this type of motion practice would limit investors' access to the forum, either by making arbitration too costly or by denying customers their right to have their claims heard in arbitration.

FINRA believes that the enforcement mechanisms in the rules will minimize parties' costs and ensure strict compliance with the rules. The risk of monetary penalties and sanctions, imposed either by the panel on its own initiative, or as a result of a party's motion, should deter parties from filing a Rule 12504(a) motion frivolously or in bad faith.

How will the rules affect motions to dismiss filed in FINRA's arbitration forum?

Rules 12504(a)(1) and 13504(a)(1) reinforce FINRA's position that parties have the right to a hearing in arbitration by clarifying that motions to dismiss filed prior to the conclusion of a party's case-in-chief, including prehearing motions, are discouraged in arbitration. The rules significantly limit motions to dismiss filed prior to the conclusion of a party's case-in-chief.⁷ Under the rules, the panel cannot act upon a motion to dismiss a party or claim, unless the panel determines that: (1) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release; (2) the moving party was not associated with the account(s), security(ies) or conduct at issue; or (3) the claim does not meet the criteria of the eligibility rule.

How should arbitrators apply the three exceptions?

Prior settlement or release

A panel cannot act on a motion to dismiss under Rules 12504(a)(6)(A) and 13504(a)(6)(A) unless the panel determines that the non-moving party previously released the claims in dispute by a signed settlement agreement and/or written release. Parties seeking this exception should provide arbitrators with valid documents that indicate that the claims in the current dispute have been resolved in a previous dispute.

Not associated with the account, security or conduct at issue

A panel cannot act on a motion to dismiss under Rules 12504(a)(6)(B) and 13504(a)(6)(B) unless the panel determines that the moving party was not associated with the accounts, securities or conduct at issue. FINRA intends this exception to apply in cases involving issues of misidentification. For example, the panel could grant a motion to dismiss under this exception if a party files a claim against the wrong person or entity, or a claim names an individual who was not employed by the firm during the time of the dispute, or a claim names an individual or entity that was not connected to an account, security or conduct at the firm during the time of the dispute.

Eligibility

A panel may grant a motion to dismiss on eligibility grounds at any stage of the proceeding, including a prehearing motion, under Rules 12206(b)(7) and 13206(b)(7) if the claim is not eligible for submission to arbitration because six years have elapsed from the occurrence or event giving rise to the claim. Parties seeking this exception should provide arbitrators with valid documents that indicate when the occurrence or event took place.

FINRA emphasizes that these exceptions do not constitute an invitation to parties to file motions to dismiss. The fact that a motion may be filed under one of these exceptions does not mean that the panel should or will grant a motion that does not have merit.

How should a party file a Rule 12504(a) motion?

A Rule 12504(a) motion must be filed in writing, separately from the answer and filed only after the answer is filed. For a Rule 12504(a) motion, the party filing the motion must serve the other parties and the FINRA Director of Arbitration with the motion at least 60 days before a scheduled hearing.⁸ The parties receiving the Rule 12504(a) motion will have 45 days to respond to the motion.⁹ The filing and response deadlines are different under the eligibility rule and are discussed later in this *Notice*.

Are there procedures that a panel must follow to decide a Rule 12504(a) motion?

Yes. The full panel must decide a Rule 12504(a) motion.¹⁰ Moreover, the panel may not grant a Rule 12504(a) motion unless the panel holds or the parties waive an in-person or telephonic prehearing conference on the motion.¹¹ In addition, FINRA will record prehearing conferences to decide these motions.¹²

What happens if the panel grants a Rule 12504(a) motion?

If the panel grants a Rule 12504(a) motion (in whole or part), the decision must be unanimous and accompanied by a written explanation.¹³ FINRA believes that the type of relief requested by a Rule 12504(a) motion—the complete dismissal of a claim before an evidentiary hearing is completed—justifies the requirement that all arbitrators on the panel agree, based on the evidence presented by the party filing the motion, that the motion should be granted.

What happens if the panel denies a Rule 12504(a) motion?

If a panel denies a Rule 12504(a) motion, it must assess forum fees associated with the hearing(s) on the motion against the party who filed the Rule 12504(a) motion.¹⁴

May a party re-file a Rule 12504(a) motion that has been denied?

A party may not re-file a Rule 12504(a) motion that has been denied, unless specifically permitted by panel order.¹⁵ If a panel denies a Rule 12504(a) motion that was filed before the effective date of the new rules but permits a party to re-file the motion after the effective date, the re-filed Rule 12504(a) motion will be governed by the new rules.

What happens if the panel determines that a party has filed a motion to dismiss frivolously?

If a panel determines that a party filed a Rule 12504(a) or eligibility motion frivolously, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.¹⁶

What happens if the panel determines that a party has filed a motion to dismiss in bad faith?

If a panel determines that a party filed a Rule 12504(a) or eligibility motion in bad faith, the panel may also issue sanctions against the party that filed the motion.¹⁷ Under the Codes, 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.¹⁸ Such 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.¹⁹

Do the rules prohibit a party from filing other motions to dismiss?

No. A party may file a Rule 12504(b) motion and such a motion will not be subject to the exceptions in Rule 12504(a).²⁰ Thus, a moving party may file a Rule 12504(b) motion based on any applicable theory of law. FINRA expects these motions to be relevant to the case and based on theories that are germane to the issues raised in the non-moving party's case. FINRA believes that by the close of the non-moving party's case, the panel will have heard enough evidence to decide whether a motion filed at this stage of the case should be considered and, if warranted, granted.

FINRA notes, however, that if a party files a Rule 12504(b) motion, the panel is not required to consider or grant the motion; rather, arbitrators will continue to control the hearing process, which includes deciding whether to hear such a motion. Further, the rule will not preclude a panel from assessing parties who file these motions with sanctions, costs or attorney's fees if the panel determines that a Rule 12504(b) motion filed at this time is frivolous or in bad faith.²¹

Are the changes under the eligibility rule the same as the provisions under the motion to dismiss rule?

Many of the changes under the eligibility rule are the same as those under the motion to dismiss rule, but there are some differences:

- ▶ First, the two exceptions to the motion to dismiss rule that prohibit arbitrators from acting on a motion to dismiss prior to the conclusion of party's case, including a prehearing motion (*i.e.*, a signed settlement agreement and/or written release and the contention that a moving party was not associated with the accounts, securities or conduct at issue), will not apply to eligibility motions.
- ▶ Second, the filing deadlines for eligibility motions are different from those in the motion to dismiss rule. Under the eligibility rule, a party may file a motion to dismiss on eligibility grounds at any stage of the proceeding, except that a party may not file this motion any later than 90 days before the scheduled hearing on the merits,²² rather than the 60-day timeframe required under the motion to dismiss rule. The 90-day requirement will encourage parties wishing to file an eligibility motion to determine in the early stages of the case whether to pursue their claims in court or to proceed with the arbitration. Further, the rule also provides parties with 30 days to respond to an eligibility motion,²³ instead of the 45 days permitted under the motion to dismiss rule. The 30-day timeframe to respond to eligibility motions will expedite the process, so that the time between filing a claim and resolution of the dispute is shortened.

- ▶ Third, if a party files an eligibility motion that includes multiple other grounds (*i.e.*, a mixed motion), the panel must decide the eligibility issue first.²⁴ If the panel grants a mixed motion on eligibility grounds, it must not rule on any other grounds for the motion.²⁵ Further, if a party files a mixed motion, the party responding to the mixed motion will have 45 days to respond. FINRA believes the response time is appropriate in the case of a mixed motion, because the non-moving party will be required to prepare for and address each ground that the moving party uses to argue for dismissal.

Effective Date Provisions

The amendment becomes effective on February 23, 2009, and applies to motions to dismiss filed on or after the effective date.

30-Day Moratorium on Motions to Dismiss

FINRA is imposing a moratorium on filing motions to dismiss prior to the conclusion of a party's case-in-chief from the date of this *Notice*, January 23, 2009, until the effective date of the new rules, February 23, 2009. This means that parties may not file such motions from January 23, 2009 to February 23, 2009. The term "case-in-chief" means the main case presented by the party who files the statement of claim, through the use of documentary evidence and witnesses, at an arbitration hearing. FINRA believes that imposing a moratorium on such motions during this pre-effective period will make the arbitration process fair to all parties, will make the new rules simple for staff and arbitrators to apply and will prevent abuse during the time before the rules become effective.

Does the moratorium apply to all motions filed in arbitration?

No. The moratorium does not apply to the following motions:

- ▶ motions filed after a party has concluded its case-in-chief;
- ▶ motions filed under Rules 12503 and 13503 other than motions to dismiss;
- ▶ motions to compel discovery under Rules 12509 and 13509;
- ▶ motions for sanctions under Rules 12212 and 13212;
- ▶ motions for discovery sanctions under Rules 12511 and 13511;
- ▶ motions to withdraw a claim under Rules 12702 and 13702; and
- ▶ motions to submit documents after the case is closed under Rules 12905 and 13905.

Parties may file these motions during the moratorium and arbitrators may consider and act on them.

What happens to motions to dismiss filed prior to January 23, 2009?

The moratorium will not apply to motions to dismiss filed prior to the date of this *Notice*. Arbitrators may consider and act on motions filed prior to the date of the *Notice*, using the current procedures established for motions under the Codes, until the effective date of the new rules.

Do you have examples of how FINRA will apply the moratorium?

Yes. The following examples should help users of the forum understand how the moratorium will be applied.

- ▶ **Example 1:** A party filed an arbitration claim in 2008. The arbitration hearings have not begun. A moving party filed a motion to dismiss on January 19, 2009 and the arbitrators took it under advisement. The moratorium would not apply, and the arbitrators should address this motion using the current procedures established for motions under the Codes.
- ▶ **Example 2:** A party filed an arbitration claim in 2008. The arbitration hearings are scheduled to begin on January 28, 2009. A moving party files a motion to dismiss on January 26, 2009. The motion would be subject to the moratorium. Thus, the party filing the arbitration claim will not be required to respond to the motion and arbitrators will not consider it.
- ▶ **Example 3:** The same facts as Example 2, except that the party concludes its case-in-chief on January 30, 2009. A moving party files a motion to dismiss at the conclusion of the party's case-in-chief. The motion would not be subject to the moratorium because the party has finished presenting its case-in-chief. The arbitrators would address this motion using the current procedures established for motions under the Codes.

Endnotes

- 1 Exchange Act Release No. 59189 (December 31, 2008), 74 Federal Register 731 (January 7, 2009) (File No. SR-FINRA-2007-021).
- 2 FINRA describes this motion using the rule number from the Customer Code for simplicity. However, the description also applies to motions filed under Rule 13504(a) of the Industry Code.
- 3 See note 2. The same rationale applies to Rule 13504(b) of the Industry Code.
- 4 FINRA describes the eligibility motion using the rule number from the Customer Code for simplicity. However, the description also applies to eligibility motions filed under Rule 13206(b) of the Industry Code.
- 5 See also Rules 13206(b) and 13212(b) of the Industry Code.
- 6 A single arbitrator ordinarily hears cases involving \$50,000 or less in dispute; a panel of three arbitrators hears larger cases. FINRA uses the term “panel” for both situations in this *Notice*. FINRA is proposing to raise the amount in controversy heard by a single chair-qualified arbitrator to \$100,000. See SR-FINRA-2008-047.
- 7 Rules 12504(a)(6) and 13504(a)(6) of the motion to dismiss rule and Rules 12206(b)(7) and 13206(b)(7) of the eligibility rule.
- 8 Rules 12504(a)(3) and 13504(a)(3). Under this provision, parties may agree to or the panel may decide to modify this deadline.
- 9 *Id.*
- 10 Rules 12504(a)(4) and 13504(a)(4) of the motions to dismiss rule and Rules 12206(b)(3) and 13206(b)(3) of the eligibility rule.
- 11 Rules 12206(b)(4) and 13206(b)(4) of the eligibility rule and Rules 12504(a)(5) and 13504(a)(5).
- 12 *Id.*
- 13 Rules 12504(a)(7) and 13504(a)(7) of the motion to dismiss rule and Rules 12206(b)(5) and 13206(b)(5) of the eligibility rule.
- 14 Rules 12504(a)(9) and 13504(a)(9) of the motions to dismiss rule and Rules 12206(b)(8) and 13206(b)(8) of the eligibility rule.
- 15 Rules 12504(a)(8) and 13504(a)(8) of the motions to dismiss rule and Rules 12206(b)(6) and 13206(b)(6) of the eligibility Rule.
- 16 Rules 12504(a)(10) and 13504(a)(10) of the motion to dismiss rule and Rules 12206(b)(9) and 13206(b)(9) of the eligibility rule.
- 17 Rules 12504(a)(11) and 13504(a)(11) of the motion to dismiss rule and Rules 12206(b)(10) and 13206(b)(10) of the eligibility rule.
- 18 Rules 12212 and 13212 of the Codes.
- 19 *Id.*
- 20 Rules 12504(b) and 13504(b) of the motions to dismiss rule.
- 21 Note 18.
- 22 Rules 12206(b)(2) and 13206(b)(2) of the eligibility rule.
- 23 *Id.*
- 24 Rules 12206(b)(7) and 13206(b)(7) of the eligibility Rule.
- 25 *Id.* The rule also contains other criteria concerning motions to dismiss based on eligibility grounds.

Attachment A

New language is underlined.

Code of Arbitration Procedure for Customer Disputes
and
Code of Arbitration Procedure for Industry Disputes

* * *

Customer Code

12206. Time Limits

(a) No change.

(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.

(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) - (d) No change.

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Rule 12504. [Reserved] Motions to Dismiss

(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.

(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 subparagraph (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.

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Industry Code

13206. Time Limits

(a) No change.

(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.

(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 13606.

(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 13504(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 13212 if it determines that a party filed a motion under this rule in bad faith.

(c) - (d) No change.

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13504. [Reserved] Motions to Dismiss

(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.

(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 13606.

(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 13212 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 subparagraph (a).

(c) Motions to Dismiss Based on Eligibility

A motion to dismiss based on eligibility filed under Rule 13206 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 13212 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 13511 will be governed by that rule.

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