

Arbitration Fee Changes

Amendments to the Arbitration Rules on Fees Assessed Under the Postponement and Hearing Session Fee Rules

Effective Date: May 3, 2010

Executive Summary

Effective May 3, 2010, the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes clarify the applicability of the fee waiver provision of the postponement rule and codify the hearing session fee for an unspecified damages claim heard by one arbitrator.¹

The text of the amendments to the rules is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

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April 2010

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Arbitration
- Code of Arbitration Procedure
- Postponement Rule
- Hearing Session Fee Rule

Referenced Rules & Notices

- Rule 12601(b)(3)
- Rule 12902(a)(1)
- Rule 13601(b)(3)
- Rule 13902(a)(1)

Background and Discussion

FINRA is amending the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Code of Arbitration Procedure for Industry Disputes (Industry Code) (together, the Codes) to address the fee waiver provision of the postponement rule and the hearing session fee for one arbitrator in an unspecified damages claim. First, amendments to Rules 12601(b)(3) and 13601(b)(3)—referred to as the fee waiver provision of the postponement rule—clarify that FINRA will not waive the late postponement fee, as set forth in Rule 12601(b)(2), if parties request a postponement within three business days before the scheduled hearing session. Second, amendments to Rules 12902(a)(1) and 13902(a)(1) codify the forum's current practice of charging \$450 per hearing session for an unspecified damages claim heard by one arbitrator.

Each amendment is discussed separately below.²

Amendment to Fee Waiver Provision of Postponement Rule

The Codes require arbitration hearings to be postponed if the parties agree.³ Hearings may also be postponed by the Director of FINRA Dispute Resolution (Director), by the panel in its own discretion, or by the panel on a motion of a party.⁴ If a hearing is postponed, the arbitration panel assesses a postponement fee against one or more of the parties, which is typically equivalent to the applicable hearing session fee that would have been assessed had the hearing been held.⁵

There are instances, however, in which a postponement fee is not assessed against the parties. For example, under the Codes, parties are not charged a postponement fee if they agree to submit the matter to mediation at FINRA.⁶ If the parties agree to mediation administered through FINRA, the Director waives the postponement fee.

Under Rule 12601(b)(2), if parties request and are granted a hearing postponement within three business days of a scheduled hearing session (*i.e.*, a late postponement request), the Director assesses a fee of \$100 per arbitrator.⁷ Some parties who make late postponement requests believe they should not be charged the \$100 late postponement fee if they express intent to mediate through FINRA.

To correct this misinterpretation and ensure uniform application of the fee waiver provision of the postponement rule, FINRA is amending the Codes⁸ to state, in relevant part, that 1) FINRA will not assess a postponement fee if a hearing is postponed because the parties agree to submit the matter to mediation administered through FINRA; and 2) the parties must pay the additional fees described in the rules for late postponement requests.

Amendment to the Hearing Session Fee for One Arbitrator in Unspecified Damages Claim

In the arbitration forum, if the parties and the arbitrator(s) meet to discuss the issues giving rise to the arbitration dispute, the meeting is called a “hearing session.”⁹ The Codes authorize FINRA to assess hearing session fees against the parties for each hearing session.¹⁰ The total amount charged to the parties for each hearing session is based on the amount in dispute.¹¹ For claims that do not request or specify money damages (*i.e.*, an unspecified damages claim), however, the Codes give the Director the discretion to determine the amount of the hearing session fee, except that the fee cannot exceed \$1,200.¹²

Currently, the fee charged for each hearing session in an unspecified damages claim heard by three arbitrators is \$1,000.¹³ However, for an unspecified damages claim heard by one arbitrator, the rules list the hearing session fee as not applicable (N/A).¹⁴ FINRA is amending the Codes to change the current amount for an unspecified damages claim heard by one arbitrator from N/A to \$450.¹⁵

FINRA notes that because hearing sessions with a single arbitrator in unspecified damage claims do occur, the chart of fees should not reflect that this scenario is “not applicable.” FINRA also notes that the Codes authorize the Director to determine whether the hearing session fee for an unspecified damages claim should be more or less than the amount specified in the fee schedules of the arbitration rules. The amendment will not change FINRA’s practice of reducing or waiving fees in documented cases of financial hardship.

Effective Date Provisions

The amendments become effective on May 3, 2010, and apply to claims filed on or after that date.

Endnotes

- 1 Exchange Act Release No. 61505 (Feb. 4, 2010), 75 Federal Register 7297 (Feb. 18, 2010) (File No. SR-FINRA-2009-075).
- 2 The amendments to the rules of the Customer Code are identical to those of the Industry Code. Thus, for simplicity, the discussion will focus on the amendments to Codes because the explanation and rationale apply to the same rules of each Code.
- 3 Rule 12601(a)(1) of the Customer Code, and Rule 13601(a)(1) of the Industry Code.
- 4 Rule 12601(a)(2) of the Customer Code, and Rule 13601(a)(2) of the Industry Code.
- 5 Rule 12601(b)(1) of the Customer Code, and Rule 13601(b)(1) of the Industry Code.
- 6 Rule 12601(b)(3) of the Customer Code and Rule 13601(b)(3) of the Industry Code.
- 7 Rule 12601(b)(2) of the Customer Code, and Rule 13601(b)(2) of the Industry Code.
- 8 Rule 12601(b)(3) of the Customer Code and Rule 13601(b)(3) of the Industry Code.
- 9 A hearing session can either be an arbitration hearing or a prehearing conference. Rule 12100(n) of the Customer Code and Rule 13100(n) of the Industry Code.
- 10 Rule 12902(a)(1) of the Customer Code and Rule 13902(a)(1) of the Industry Code.
- 11 *Id.*
- 12 Rule 12902(a)(2) of the Customer Code and Rule 13902(a)(2) of the Industry Code.
- 13 Note 10.
- 14 *Id.*
- 15 *Id.*

ATTACHMENT A

New language is underlined; deletions are in brackets.

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

Customer Code

12601. Postponement of Hearings

(a) No change.

(b) Postponement Fees

(1) - (2) No change.

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

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

(c) No change.

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
\$5000.01 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] <u>\$450</u>	\$1,000

(2) – (4) No change.

(b) – (e) No change.

Industry Code**13601. Postponement of Hearings**

(a) No change.

(b) Postponement Fees

(1) - (2) No change.

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

- Because the parties agree to submit the matter to mediation [at] administered through FINRA, except that the parties shall pay the additional fees described in Rule 13601(b)(2) for late postponement requests;
- By the panel in its own discretion; or
- By the Director in extraordinary circumstances.

(c) No change.

13902. 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
\$5000.01 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] <u>\$450</u>	\$1,000

(2) – (3) No change.

(b) – (e) No change.
