

## Simplified Arbitration

### SEC Approves Amendments to Arbitration Codes to Provide an Additional Hearing Option in Simplified Arbitration

Effective Date: September 17, 2018

#### Summary

FINRA has amended its rules to provide a new option for simplified arbitration.<sup>1</sup> The amendments provide an additional hearing option for parties in arbitration with claims of \$50,000 or less, excluding interest and expenses.

The amendments are effective September 17, 2018.

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

Questions concerning this *Notice* should be directed to:

- ▶ David Carey, Associate Director, Office of Dispute Resolution, at (212) 858-4333 or [david.carey@finra.org](mailto:david.carey@finra.org); or
- ▶ Kristine Vo, Assistant Chief Counsel, Office of Dispute Resolution, at (212) 858-4106 or [kristine.vo@finra.org](mailto:kristine.vo@finra.org).

#### Background & Discussion

The Code of Arbitration Procedure for Customer Disputes (Customer Code) and the Code of Arbitration Procedure for Industry Disputes (Industry Code, and together with the Customer Code, the Codes) provide two options for administering cases with claims involving \$50,000 or less, excluding interest and expenses. The default option is a decision by a single arbitrator based on the parties' pleadings and other materials submitted by the parties. The alternative option is a full hearing with a single arbitrator. Under the Customer Code, a customer may request a hearing (regardless of whether the customer is a claimant or respondent),<sup>2</sup> and under the Industry Code, only the claimant may request a hearing.<sup>3</sup> If a hearing is requested, it is generally held in person, and there are no limits on the number of hearing sessions that can take place.

July 23, 2018

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives

#### Key Topics

- ▶ Arbitration
- ▶ Codes of Arbitration Procedure
- ▶ Simplified Arbitration

#### Referenced Rules & Notices

- ▶ FINRA Rule 12600
- ▶ FINRA Rule 12800
- ▶ FINRA Rule 13600
- ▶ FINRA Rule 13800

FINRA amended the Codes to provide an additional hearing option for parties in arbitration with claims of \$50,000 or less, excluding interest and expenses (Special Proceeding). When filing a statement of claim through the Dispute Resolution Portal (DR Portal), a claimant will be prompted to choose one of the three options, including a Special Proceeding. When FINRA transmits the statement of claim to the respondent, FINRA will advise the respondent if the claimant has elected a Special Proceeding. The Special Proceeding option is subject to regular provisions of the Codes relating to prehearings and hearings, including all fee provisions, with several limiting conditions. The conditions are intended to ensure that parties have an opportunity to present their case to an arbitrator in a convenient and cost-effective manner that is less demanding than a regular hearing. Specifically:

- ▶ a Special Proceeding is held by telephone unless the parties agree to another method of appearance;
- ▶ the claimants, collectively, are limited to two hours to present their case(s) and half hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;
- ▶ the respondents, collectively, are limited to two hours to present their case and half hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;
- ▶ notwithstanding the above conditions, the arbitrator would have the discretion to cede his or her allotted time to the parties;<sup>4</sup>
- ▶ in no event could a Special Proceeding exceed two hearing sessions, exclusive of prehearing conferences, to be completed in one day;
- ▶ the parties will not be permitted to question the opposing parties' witnesses;
- ▶ the Customer Code provides that the customer could not call the opposing party, a current or former associated person of a member party, or a current or former employee of a member party as a witness, and members and associated persons could not call the customer of a member party as a witness; and
- ▶ the Industry Code provides that members and associated persons could not call an opposing party as a witness.

FINRA anticipates that arbitrators will follow the usual order of proceedings. The claimant(s) will present an opening statement, followed by the respondent(s)' opening statement. The claimants will then present their case-in-chief, followed by the respondent(s)' case-in-chief. Any rebuttal would occur afterwards. The arbitrator will proceed with his or her questioning. The claimant(s) will present a closing statement, followed by the respondent(s)' closing statement. With the exception of the requirements for Special Proceedings, an arbitrator may vary the hearing procedure in his or her discretion, provided all parties are allowed a full and fair opportunity to present their respective cases.

FINRA will create a dedicated hearing script for Special Proceedings that the arbitrator will read at the start of the Special Proceeding. FINRA will also modify its Initial Pre Hearing Conference Script (IPHC Script) so that parties in Special Proceedings will have advance knowledge of the rule's requirements, including the pre-hearing exchanges of documents and exhibits. Unlike regular hearings, parties will need to file their exhibits with FINRA before the Special Proceeding so that FINRA may send the exhibits to the arbitrators. The IPHC Script will also address the need for parties to have all exhibits available while they testify telephonically.

FINRA will train arbitrators on Special Proceedings by producing a unique video training module and distributing training materials on ODR's webpage and publications including The Neutral Corner.

FINRA will monitor how the process is working to determine whether it should modify the program in any way.

## Effective Date

The amendments are effective September 17, 2018, and apply to cases filed on or after that date.

## Endnotes

1. See Securities Exchange Act Release No. 83276 (May 17, 2018), 83 *Federal Register* 100 (May 23, 2018) (Order Approving File No. SR-FINRA-2018-003).
2. See FINRA Rule 12800(c).
3. See FINRA Rule 13800(c).
4. Except for the two-hearing-session time limit for a Special Proceeding, FINRA would not impose any restrictions on the arbitrator's ability to ask the parties questions and has incorporated a substantial amount of time for arbitrator questions. Specifically, since FINRA would limit the parties' combined presentations to five hours, the arbitrator would have up to three hours to ask questions. In addition, FINRA would not prohibit the arbitrator from allowing parties additional time for their presentations or witness testimonies, so long as the hearing on the merits is completed within the two-hearing-session limit.

## Attachment A

Proposed new language is underlined; deletions are in brackets.

### Customer Code

#### 12600. Required Hearings

(a) Hearings will be held, unless:

[•] (1) The arbitration is administered under Rule 12800(c) or Rule 12801;

[•] (2) The parties agree otherwise in writing; or

[•] (3) The arbitration has been settled, withdrawn or dismissed.

(b) – (c) No change.

#### 12800. Simplified Arbitration

##### (a) Applicability of Rule

This rule applies to arbitrations involving \$50,000 or less, exclusive of interest and expenses. All arbitrations administered under this rule will be decided on the pleadings and other materials submitted by the parties unless the customer requests a hearing under paragraph (c) of this rule. Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

(b) No change

##### (c) Hearings

(1) No hearing will be held in arbitrations administered under this rule unless the customer requests a hearing.

(2) If no hearing is [held] requested, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties. [If a hearing is held, the regular provisions of the Code relating to prehearings and hearings, including fee provisions, will apply.]

(3) If the customer requests a hearing, the customer must select between one of two hearing options under this rule.

(A) Option One – the regular provisions of the Code relating to prehearings and hearings, including all fee provisions.

(B) Option Two – a special proceeding, subject to the regular provisions of the Code relating to prehearings and hearings, including all fee provisions, except as modified by subparagraphs (i) through (viii) of this paragraph:

(i) a special proceeding will be held by telephone unless the parties agree to another method of appearance;

(ii) the claimants, collectively, are limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;

(iii) the respondents, collectively, are limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;

(iv) notwithstanding subparagraphs (ii) and (iii) above, the arbitrator has the discretion to cede his or her allotted time to the parties;

(v) in no event shall a special proceeding exceed two hearing sessions, exclusive of prehearing conferences, to be completed in one day;

(vi) the parties may not question the opposing parties' witnesses;

(vii) a customer may not call an opposing party, a current or former associated person of a member party or a current or former employee of a member party as a witness; and

(viii) members and associated persons may not call a customer of a member party as a witness.

**(d) – (e)** No change.

(f) Arbitrator Honoraria

FINRA will pay the arbitrator an honorarium of \$350 for each arbitration [administered under this rule] decided on the pleadings and other materials submitted by the parties. In cases where the customer requests a hearing, the regular provisions of the Code relating to arbitrator honoraria will apply.

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## Industry Code

### 13600. Required Hearings

(a) Hearings will be held, unless:

[•] (1) The arbitration is administered under Rule 13800(c), Rule 13801 or Rule 13806(e)(1);

[•] (2) The parties agree otherwise in writing; or

[•] (3) The arbitration has been settled, withdrawn or dismissed.

(b) – (c) No change.

### 13800. Simplified Arbitration

**(a) – (b)** No change.

#### **(c) Hearings**

(1) No hearing will be held in arbitrations administered under this rule unless the claimant requests a hearing.

(2) If no hearing is [held] requested, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties. [If a hearing is held, the regular provisions of the Code relating to prehearings and hearings, including fee provisions, will apply.]

(3) If the claimant requests a hearing, the claimant must select between one of two hearing options under this rule.

(A) Option One – the regular provisions of the Code relating to prehearings and hearings, including all fee provisions.

(B) Option Two – a special proceeding, subject to the regular provisions of the Code relating to prehearings and hearings, including all fee provisions, except as modified by subparagraphs (i) through (vii) of this paragraph:

(i) a special proceeding will be held by telephone unless the parties agree to another method of appearance;

(ii) the claimants, collectively, are limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;

(ii) the respondents, collectively, are limited to two hours to present their case and ½ hour for any rebuttal and closing statement, exclusive of questions from the arbitrator and responses to such questions;

(iv) notwithstanding subparagraphs (ii) and (iii) above, the arbitrator has the discretion to cede his or her allotted time to the parties;

(v) in no event shall a special proceeding exceed two hearing sessions, exclusive of prehearing conferences, to be completed in one day;

(vi) the parties may not question the opposing parties' witnesses; and

(vii) members and associated persons may not call an opposing party as a witness.

**(d) – (e)** No change.

**(f) Arbitrator Honoraria**

FINRA will pay the arbitrator an honorarium of \$350 for each arbitration [administered under this rule] decided on the pleadings and other materials submitted by parties. In cases where the claimant requests a hearing, the regular provisions of the Code relating to arbitrator honoraria will apply.