

## Arbitration and Mediation Fees

### FINRA to Deduct All Delinquent Arbitration and Mediation Fees from CRD Accounts

Effective Date: September 22, 2008

#### Executive Summary

Effective September 22, 2008, FINRA will begin deducting all delinquent arbitration and mediation fees owed by member firms from their Central Registration Depository accounts.<sup>1</sup> Such fees are considered delinquent if they are not paid within 60 days after the date of an invoice.

When collecting arbitration and mediation fees, FINRA will:

- send a written invoice informing the firm that the fees are due and must be paid within 60 calendar days of the invoice date; and
- deduct the delinquent fees from funds maintained in a firm's Central Registration Depository account.

Questions regarding this *Notice* may be directed to Dorothy Popp, Vice President and Director of Operations, at (212) 858-3950.

August 2008

#### Notice Type

- Guidance

#### Suggested Routing

- Compliance
- Legal

#### Key Topic(s)

- Arbitration
- Central Registration Depository
- Dispute Resolution
- Fees
- Mediation

#### Referenced Rules & Notices

- NASD Rule 10000 Series
- NASD Rule 12000 Series
- NASD Rule 13000 Series
- NASD Rule 14000 Series
- NTM 97-71
- NTM 98-61
- NTM 99-84

## Discussion

### Arbitration Fees

Parties to an arbitration may be required to pay fees at various stages of the proceedings. Each party who filed a claim in an arbitration case before April 16, 2007, must pay an arbitration filing fee and hearing session deposit fee according to the schedule in the prior Code of Arbitration Procedure (NASD Rule 10000 Series) unless the Director of Arbitration defers payment of the fees.<sup>2</sup> Each party filing a claim in an arbitration case on or after April 16, 2007, must pay an arbitration filing fee according to the schedule in the Code of Arbitration Procedure for Customer Disputes (NASD Rule 12000 Series) or the Code of Arbitration Procedure for Industry Disputes (NASD Rule 13000 Series) unless the Director of Arbitration defers payment of the fee.<sup>3</sup> Other arbitration fees include the member surcharge;<sup>4</sup> pre-hearing process and hearing process fees;<sup>5</sup> an injunctive relief surcharge;<sup>6</sup> hearing session fees;<sup>7</sup> other costs and expenses;<sup>8</sup> postponement fees and fees for last minute adjournments;<sup>9</sup> and injunctive costs, expenses and arbitrator honoraria.<sup>10</sup> Parties should direct questions about the assessment of arbitration fees to the assigned case administrator.

### Mediation Fees

Each party to a matter submitted directly to mediation before January 30, 2006, must pay a mediation filing fee according to the schedule in the prior Code of Arbitration Procedure (NASD Rule 10400 series) unless the Director of Mediation waives the fee.<sup>11</sup> Each party to a matter submitted directly to mediation on or after January 30, 2006, must pay a mediation filing fee according to the schedule in the Mediation Code (NASD Rule 14000 series) unless the Director of Mediation waives the fee.<sup>12</sup> When a matter is initially filed in arbitration and is subsequently submitted to mediation, each party in a case involving more than \$25,000 in dispute must pay a mediation filing fee unless the Director of Mediation waives the fee.<sup>13</sup> Parties to a FINRA mediation must pay all of the mediator's fees and expenses.<sup>14</sup> Parties should direct questions about the assessment of mediation fees to the assigned mediation administrator.

### New Procedures for Deduction of Arbitration and Mediation Fees

Effective September 22, 2008, FINRA will begin deducting all delinquent arbitration and mediation fees owed by member firms from their Central Registration Depository (CRD) accounts. Such fees are considered delinquent if they are not paid within 60 days after the date of an invoice.

When collecting arbitration and mediation fees, FINRA will:

- send a written invoice informing the firm that the fees are due and must be paid within 60 calendar days after the date of the invoice, and
- deduct the delinquent fees from funds maintained in a firm's CRD account.

## Invoices

During an arbitration, member firms that are parties to the arbitration will receive a written invoice for all member surcharges, pre-hearing process fees and hearing process fees.<sup>15</sup> In addition, parties to a pending arbitration may receive a written invoice for any outstanding administrative or other fees billed to the parties. At the conclusion of an arbitration, parties will receive a written invoice for all outstanding arbitration fees, including filing fees, member surcharges, pre-hearing process and hearing process fees, hearing session fees, postponement fees, injunctive fees, arbitrator honoraria and other costs and expenses. For fees assessed to more than one party jointly and severally, FINRA reserves the right to invoice and collect from any party liable for those joint and several fees.

During a mediation, parties will receive one or more written invoices for mediation fees. At the conclusion of a mediation, parties will receive a final written invoice for outstanding mediation fees.

If the firm is or was represented by outside counsel in the underlying arbitration or mediation, FINRA will send the firm's invoice only to such counsel of record.<sup>16</sup>

## Deduction from CRD Account

If the firm does not pay the arbitration and mediation fees it owes within 60 days of the invoice date, FINRA will deduct the delinquent fees owed by the firm from its CRD account. Written confirmation of each deduction will continue to be provided to the firm's compliance officer.

## Suspension/Cancellation of Membership or Registration

Firms are responsible for replenishing the funds on deposit to ensure that there are no delays in processing any CRD-related obligation. If there are insufficient funds on deposit in the CRD account to cover the outstanding arbitration and mediation fees, and the firm has not made other arrangements for payment, FINRA will pursue cancellation or suspension of the firm's membership pursuant to Article VI, Section 3 of FINRA's By-Laws.

## Endnotes

- 1 For open arbitration cases, FINRA currently deducts from firms' CRD accounts all unpaid surcharges, pre-hearing process fees and hearing process fees that are more than 60 days past due. For closed cases, FINRA deducts from firms' CRD accounts all unpaid arbitration fees that are more than 60 days past due. *See NTMs 97-71, 98-61 and 99-84.*
- 2 *See* NASD Rule 10332(a).
- 3 *See* NASD Rules 12900 and 13900.
- 4 Each firm that either files or is named as a respondent in a claim, counterclaim, cross claim or third-party claim, or at the time the dispute arose employed an associated person who is named in a claim, counterclaim, cross claim or third-party claim, must pay this fee. *See* NASD Rules 12901 and 13901.
- 5 Each firm that is a party to an arbitration in which more than \$25,000, exclusive of interest and expenses, is in dispute, must pay these fees. *See* NASD Rules 12903 and 13903.
- 6 Each party seeking permanent injunctive relief in arbitration must pay this fee. *See* NASD Rules 10335(b)(6) and 13804(c)(6).
- 7 *See* NASD Rules 10332(c), 12902(a)(b) and 13902(a)(b). Hearing session fees are referred to as "forum fees" in the Code of Arbitration Procedure Rule 10000 series.
- 8 *See* NASD Rules 10332(c), 12902(c) and 13902(c).
- 9 *See* NASD Rules 10319(b) and (c), 12601(b) and 13601(b).
- 10 *See* NASD Rules 10335(b)(6) and 13804(c)(6).
- 11 *See* NASD Rule 10407(a).
- 12 *See* NASD Rule 14110(a).
- 13 *See* NASD Rules 10407(b) and 14110(b).
- 14 *See* NASD Rules 10407(c) and 14110(c).
- 15 Member firms that are not parties to an arbitration, but at the time the dispute arose employed an associated person who is a named respondent in an arbitration, will also receive a written invoice for a member surcharge fee.
- 16 FINRA will send the written invoice for a mediation case to the counsel of record in the arbitration case. If there is no arbitration case, FINRA will send the written invoice to the counsel of record in the mediation case.