

## Limit on Closed Case Submissions

### SEC Approves Rules Limiting Submissions to Arbitrators in Closed Cases

Effective Date: November 24, 2008

#### Executive Summary

Effective November 24, 2008, FINRA will limit the circumstances under which parties may make submissions to arbitrators in closed cases. The SEC approved new Rule 12905 of the Code of Arbitration Procedure for Customer Disputes and new Rule 13905 of the Code of Arbitration Procedure for Industry Disputes (the Codes). As a result, parties may not submit documents to arbitrators in cases that have been closed *except* under the following limited circumstances: 1) as ordered by a court; 2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or 3) if all parties agree and submit documents within 10 days of service of an award or notice that a matter has been closed.<sup>1</sup>

The text of Rules 12905 and 13905 is set forth in Attachment A. The rules will apply to requests made by parties on or after November 24, 2008.

Questions concerning this *Notice* should be directed to: Richard Berry, Vice President and Director of Case Administration, FINRA Dispute Resolution, at (212) 858-4307 or [richard.berry@finra.org](mailto:richard.berry@finra.org); or Margo Hassan, Counsel, FINRA Dispute Resolution, at (212) 858-4481 or [margo.hassan@finra.org](mailto:margo.hassan@finra.org).

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#### Notice Type

- Rule Amendment

#### Suggested Routing

- Compliance
- Legal

#### Key Topic(s)

- Arbitration
- Closed Cases
- Code of Arbitration Procedure
- Dispute Resolution

#### Referenced Rules & Notices

- NASD Rule 12904
- NASD Rule 12905
- NASD Rule 13904
- NASD Rule 13905

## Background & Discussion

FINRA is adopting new Rules 12905 and 13905 to strictly limit the circumstances under which parties may make submissions to arbitrators in closed cases. Currently, the Codes do not address requests to submit documents to arbitrators in closed cases. Therefore, FINRA staff has in the past solicited responses from parties in closed cases and then forwarded all such requests and responses to the arbitrators regardless of the reason for a request or the amount of time that elapsed since a case was closed. FINRA receives an estimated 150 or more requests each year, some of which involve cases that have long been closed. The arbitrators almost never grant such late requests to reopen cases. FINRA believes that the new rules will reduce the parties' costs associated with responding to such requests and will support the finality of FINRA arbitration awards.

Under Rules 12905 and 13905, parties may not submit documents to arbitrators in cases that have been closed *except* under the following limited circumstances:

1. as ordered by a court;
2. at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or
3. if all parties agree and submit documents within 10 days of service of an award or notice that a matter has been closed.

FINRA will forward to the arbitrators all requests made pursuant to a court order and will determine if submissions made pursuant to circumstances 2 and 3 comply with the grounds for submission prior to forwarding the requests to the arbitrators.<sup>2</sup> All parties will have an opportunity to respond to requests made under circumstance 2 and the responses will be forwarded to the arbitrators along with the requests. The arbitrators may decline requests made pursuant to circumstances 2 and 3 and such requests will be considered denied unless the arbitrators rule within 10 days after FINRA forwards the documents to them. The new rules do not extend the time period for the payment of any award pursuant to Rules 12904 and 13904.<sup>3</sup>

The amendments will become effective on November 24, 2008, and will apply to requests received from parties on or after the effective date.

## Endnotes

- 1 Exchange Act Release No. 58739 (October 6, 2008), 73 Federal Register 60738 (October 14, 2008) (File No. SR-FINRA-2008-005).
- 2 An example of a request relating to a typographical or computational error would be an addition mistake made when computing forum fees. An example of a mistake in the description of a person or property would be an incorrect reference to the title of an account in an award.
- 3 Rules 12904(i) and 13904(i) provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

## Attachment A

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

#### Customer Code

##### 12905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

(1) as ordered by a court;

(2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or

(3) if all parties agree and submit documents within 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 12904.

## Industry Code

### 13905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

(1) as ordered by a court;

(2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or

(3) if all parties agree and submit documents within 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 13904.