

## Arbitration Submission Agreement

### SEC Approves Proposed Rule Change to Amend the Submission Agreement and Related Rules in the Arbitration Codes for Customer and Industry Disputes

Effective Date: February 9, 2009

#### Executive Summary

On February 9, 2009, an amendment to the Submission Agreement and related rules of the Codes of Arbitration Procedure for Customer and Industry Disputes becomes effective and applies to claims filed on or after February 9, 2009.<sup>1</sup> The amendment:

- (1) clarifies what the parties are attesting to when they execute the agreement;
- (2) requires parties to indicate in what capacity they are signing the agreement; and
- (3) converts it to a FINRA-specific agreement.

The text of the rule amendment and the revised Submission Agreement are set forth in Attachment A.

Questions concerning this *Notice* should be directed to Richard W. 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 Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, at (202) 728-8151 or [mignon.mclemore@finra.org](mailto:mignon.mclemore@finra.org).

January 2009

#### Notice Type

- Rule Amendment

#### Suggested Routing

- Compliance
- Legal
- Registered Representatives
- Senior Management

#### Key Topic(s)

- Arbitration
- Code of Arbitration Procedure
- Dispute Resolution

#### Referenced Rules & Notices

- FINRA Rule 12100
- FINRA Rule 12302
- FINRA Rule 12303
- FINRA Rule 12306
- FINRA Rule 12307
- FINRA Rule 13100
- FINRA Rule 13302
- FINRA Rule 13303
- FINRA Rule 13306
- FINRA Rule 13307

## Background and Discussion

The Submission Agreement is a document that claimants and respondents (hereinafter, collectively referred to as “parties”) must sign prior to entering into arbitration. Rule 12302(a) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13302(a) of the Code of Arbitration Procedure for Industry Disputes (Industry Code) require a claimant to file a signed and dated Submission Agreement and a statement of claim to initiate an arbitration. Similarly, Rules 12303(a) and 13303(a) require a respondent to serve each other party with a signed and dated Submission Agreement and an answer within 45 days of receipt of the statement of claim. By signing the Submission Agreement, the parties agree to submit to the arbitration process, and to be bound by FINRA’s arbitration procedures and rules and any award that may be rendered by the arbitrator(s).

The amendment to the Submission Agreement and related rules:

- (1) clarifies what the parties are attesting to when they execute the agreement;
- (2) requires parties to indicate in what capacity they are signing the agreement; and
- (3) converts it to a FINRA-specific agreement.

First, FINRA is amending section 2 of the Submission Agreement to permit parties to certify that they or their representatives read the relevant procedures and rules and that the parties agree to be bound by them. The current Submission Agreement requires that the parties make this certification, and does not permit representatives to do so. The amendment takes into account current practice in the forum in which investors who are represented by counsel rely on their attorneys or other representatives to know and read the rules. Thus, the amendment better reflects what the parties are attesting to when they execute the Submission Agreement. The rule makes clear, however, that the parties themselves continue to be bound by the procedures and rules, whether or not they read them personally.

Second, the amendment requires parties to indicate in what capacity they are signing the agreement. Because the Submission Agreement is a contract between the parties and the arbitration forum, FINRA must ensure that the parties entering the agreement have the authority or standing to sign the agreement. In cases in which the person signing the agreement is not an individual, such as a trustee of an estate, the party must sign the agreement in his or her capacity, so that FINRA can determine from the statement of claim and other supporting information whether he or she is authorized to enter the agreement.

Third, the amendment converts the Submission Agreement into a FINRA-specific agreement by:

- (1) removing generic references and replacing them with “FINRA;”
- (2) expressly describing the names of rules and regulations used by the forum; and
- (3) removing the term “Uniform” from the title of the agreement.

FINRA is also making some minor plain-English changes to the document that clarify the applicability of the form and which FINRA rules apply in the arbitration context.

## Effective Date

The amendment will become effective on February 9, 2009, and will apply to claims filed on or after February 9, 2009.

## Endnote

- 1 Exchange Act Release No. 59091 (Dec. 12, 2008), 73 Federal Register 77086 (Dec. 18, 2008) (File No. SR-FINRA-2008-031).

## ATTACHMENT A

New language is underlined; deleted language in brackets.

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

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#### Customer Code

##### **12100[(y)] (x). [Uniform] Submission Agreement**

The term “[Uniform] Submission Agreement” means the FINRA [Uniform] Submission Agreement. The FINRA [Uniform] Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

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##### **12100[(x)] (y). Third Party Claim**

No change.

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##### **12302. Filing an Initial Statement of Claim**

###### **(a) Filing Claim with the Director**

(1) To initiate an arbitration, a claimant must file the following with the Director:

- Signed and dated [Uniform] Submission Agreement; and  
{Remainder of rule – No change.}

###### **(b) Number of Copies**

The claimant must file enough copies of the statement of claim, if it has not been submitted electronically, and the signed [Uniform] Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.

(c) No change.

**(d) Service by Director**

Unless the statement of claim is deficient under Rule 12307, the Director will send a copy of the [Uniform] Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.

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### **12303. Answering the Statement of Claim**

(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:

- Signed and dated [Uniform] Submission Agreement; and  
{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the [Uniform] Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with enough copies for the Director and each arbitrator.

(d) No change.

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### **12306. Answering Third Party Claims**

(a) A party responding to a third party claim must directly serve all other parties with the following documents within 45 days of receipt of the third party claim:

- Signed and dated [Uniform] Submission Agreement; and  
{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the [Uniform] Submission Agreement, the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator.

(d) No change.

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### 12307. Deficient Claims

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- A [Uniform] Submission Agreement was not filed by each claimant;
- The [Uniform] Submission Agreement was not properly signed and dated;
- The [Uniform] Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the [Uniform] Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;

{Remainder of rule – No change.}

(b) – (c) No change.

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## Industry Code

### 13100[(bb)] (z). [Uniform] Submission Agreement

The term “[Uniform] Submission Agreement” means the FINRA [Uniform] Submission Agreement. The FINRA [Uniform] Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

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### 13100 [(z)] (aa). Temporary Injunctive Order

No change.

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### 13100[(aa)] (bb). Third Party Claim

No change.

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### **13302. Filing an Initial Statement of Claim**

#### **(a) Filing Claim with the Director**

(1) To initiate an arbitration, a claimant must file the following with the Director:

Signed and dated [Uniform] Submission Agreement; and  
{Remainder of rule – No change.}

#### **(b) Number of Copies**

The claimant must file enough copies of the statement of claim, if it has not been submitted electronically, and the signed [Uniform] Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.

(c) No change.

#### **(d) Service by Director**

Unless the statement of claim is deficient under Rule 13307, the Director will send a copy of the [Uniform] Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.

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### **13303. Answering the Statement of Claim**

(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:

- Signed and dated [Uniform] Submission Agreement; and  
{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the [Uniform] Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with enough copies for the Director and each arbitrator.

(d) No change.

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### 13306. Answering Third Party Claims

(a) A party responding to a third party claim must directly serve all other parties with the following documents within 45 days of receipt of the third party claim:

- Signed and dated [Uniform] Submission Agreement; and

{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the [Uniform] Submission Agreement, the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator.

(d) No change.

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### 13307. Deficient Claims

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- A [Uniform] Submission Agreement was not filed by each claimant;
- The [Uniform] Submission Agreement was not properly signed and dated;
- The [Uniform] Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the [Uniform] Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;

{Remainder of rule – No change.}

(b) – (c) No change.

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# SUBMISSION AGREEMENT FOR CLAIMANTS

## FINRA Arbitration

### [UNIFORM] SUBMISSION AGREEMENT

#### Claimant(s)

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

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and

Name(s) of Respondent(s)

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1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, [cross claims] and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the [Constitution,] FINRA By-Laws, Rules, [Regulations,] and[/or] Code of Arbitration Procedure [of the sponsoring organization].
2. The [undersigned] parties hereby state that they or their representative(s) have read the procedures and rules of [the sponsoring organization] FINRA relating to arbitration and the parties agree to be bound by these procedures and rules.
3. The [undersigned] parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The [undersigned] parties further agree and understand that the arbitration will be conducted in accordance with the [Constitution, By-Laws, Rules, Regulations, and/or] FINRA Code of Arbitration Procedure [of the sponsoring organization].
4. The [undersigned] parties [further] agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. [and] The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the [undersigned] parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.
5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

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Claimant Name (please print)

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Claimant Signature

Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

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Claimant Name (please print)

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Claimant Signature

Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

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# SUBMISSION AGREEMENT FOR RESPONDENTS

## FINRA Arbitration

### [UNIFORM] SUBMISSION AGREEMENT

#### Respondent(s)

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

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and

Name(s) of Respondent(s)

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1. The undersigned parties (“parties”) hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, [cross claims] and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the [Constitution,] FINRA By-Laws, Rules, [Regulations,] and[/or] Code of Arbitration Procedure [of the sponsoring organization].
2. The [undersigned] parties hereby state that they or their representative(s) have read the procedures and rules of [the sponsoring organization] FINRA relating to arbitration and the parties agree to be bound by these procedures and rules.
3. The [undersigned] parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The [undersigned] parties further agree and understand that the arbitration will be conducted in accordance with the [Constitution, By-Laws, Rules, Regulations, and/or] FINRA Code of Arbitration Procedure [of the sponsoring organization].
4. The [undersigned] parties [further] agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. [and] The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the [undersigned] parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.
5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

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Respondent Name (please print)

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Respondent’s Signature

Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

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Respondent Name (please print)

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Respondent’s Signature

Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

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