

Explained Arbitration Decisions

SEC Approves Amendments to Require Arbitrators to Provide an Explained Decision at Parties' Joint Request

Effective Date: April 13, 2009

Executive Summary

Effective April 13, 2009, FINRA will require arbitrators to provide an explained decision at the parties' joint request. An explained decision is a fact-based award stating the general reasons for the arbitrators' decision. Parties will be required to submit any joint request for an explained decision at least 20 days before the first scheduled hearing date. The chairperson of the arbitration panel will write the explained decision and will receive an additional honorarium of \$400 for doing so.

The SEC approved amendments to FINRA Rules 12214, 12514 and 12904 of the Customer Code of Arbitration Procedure and FINRA Rules 13214, 13514 and 13904 of the Industry Code of Arbitration Procedure relating to explained decisions.¹ The text of the rules is set forth in Attachment A, and will apply to all arbitration cases in which an initial prehearing conference has not been held, or waived by the parties, by the effective date.

Questions concerning this *Notice* should be directed to:

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Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal

Key Topic(s)

- Arbitration
- Award
- Code of Arbitration Procedure
- Dispute Resolution
- Explained Decision

Referenced Rules & Notices

- FINRA Rule 12214
- FINRA Rule 12514
- FINRA Rule 12904
- FINRA Rule 13214
- FINRA Rule 13514
- FINRA Rule 13904

Background & Discussion

FINRA is amending its Customer Code and Industry Code to require arbitrators to provide an explained decision at the parties' joint request. The absence of explanations in awards has been a common complaint of non-prevailing parties in FINRA's arbitration forum, especially customers and associated persons. The amendments are intended to address this complaint and increase investor confidence in the fairness of the arbitration process.

An explained decision is a fact-based award stating the general reasons for the arbitrators' decision.² It does not need to include legal authorities and/or damage calculations. Normally, the arbitrators will be resolving the entire matter; thus, the explained decision will address all the claims asserted by the parties. However, the parties may request that an explained decision address only certain claims.

Parties will be required to submit any joint request for an explained decision no later than 20 days prior to the first scheduled hearing date.

The chairperson of the arbitration panel will write the explained decision and will receive an additional honorarium of \$400. Once the decision is drafted, the other arbitrators will participate in completing the decision as provided in Rules 12904(a) and 13904(a).³ As with all other awards, the arbitrators will continue to be permitted to concur, concur in part, dissent or dissent in part. The panel may allocate the cost of the honorarium to one party, or may allocate it between or among all parties. Arbitrators will continue to be permitted to decide, on their own, to write an explained decision.⁴ If the panel or a member of the panel decides to write an explained decision in the absence of a joint request, FINRA will not pay an additional honorarium to any panel member.

Parties will not be able to require explained decisions in simplified arbitrations that are resolved without a hearing or in default proceedings.⁵ Explained decisions are not appropriate in either of these situations because of the abbreviated nature of the proceedings.

The amendments become effective on April 13, 2009, and will apply to all arbitration cases in which an initial prehearing conference has not been held, or waived by the parties, by the effective date.

Endnotes

- 1 Exchange Act Release No. 59358 (February 4, 2009), 74 Federal Register 6928 (February 11, 2009) (File No. SR-FINRA-2008-051).
- 2 As with current FINRA awards, explained decisions will have no precedential value in other cases. Arbitrators will not be required to follow any findings or determinations set forth in prior explained decisions.
- 3 Rules 12904(a) and 13904(a) require all awards to be in writing and signed by a majority of the arbitrators or as required by applicable law.
- 4 FINRA did not amend Rules 12904(f) and 13904(f), which provide that an award may contain an underlying rationale.
- 5 See Rules 12800 and 13800 concerning simplified arbitration proceedings, and Rules 12801 and 13801 concerning default proceedings.

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

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Customer Code

12214. Payment of Arbitrators

(a) – (d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 12904(g) will receive an additional honorarium of \$400. The panel will allocate the cost of the honorarium under Rule 12904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$400.

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12514. Pre-hearing Exchange of Documents and Witness Lists [Before Hearing], and Explained Decision Requests

(a) – (c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 12904(g).

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12904. Awards

(a) – (f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule 12514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 12800 or to default cases conducted under Rule 12801.

(g) – (i) Renumbered as (h) – (j).

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Industry Code

13214. Payment of Arbitrators

(a) – (d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 13904(g) will receive an additional honorarium of \$400. The panel will allocate the cost of the honorarium under Rule 13904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$400.

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13514. Pre-hearing Exchange of Documents and Witness Lists [Before Hearing], and Explained Decision Requests

(a) – (c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 13904(g).

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13904. Awards

(a) – (f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule 13514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 13800 or to default cases conducted under Rule 13801.

(g) – (i) Renumbered as (h) – (j).

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