

Regulatory Notice

10-11

Deficient Claims

Amendments to the Arbitration Rules Regarding Deficient Claims

Effective Date: March 22, 2010

Executive Summary

Effective March 22, 2010, the Codes of Arbitration Procedure for Customer and Industry Disputes are amended to clarify that if a claim deficiency is corrected within 30 days from the time a party receives notice of a deficiency, the claim will be considered filed on the date the initial statement of claim was filed.¹

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

Questions concerning this Notice should be directed to:

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- Mignon McLemore, Assistant Chief Counsel, DR, at (202) 728-8151 or mignon.mclemore@finra.org.

Background and Discussion

When parties initiate claims in FINRA's arbitration forum, they must file a signed and dated Submission Agreement and a statement of claim explaining the facts and outlining the remedies requested.² Parties must also pay all required filing fees at the time they file their claims.³ If the parties' claims do not meet the criteria for filing a claim under the Codes or otherwise do not comply with the Codes—for instance, the party failed to file the correct number of supporting documents for the claim—the claims are considered deficient.⁴

February 2010

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Arbitration
- Code of Arbitration Procedure
- Corrected Deficiency
- Deficient Claims

Referenced Rules & Notices

- Rule 12307(b)
- Rule 13307(b)

Currently, Rule 12307 of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13307 of the Code of Arbitration Procedure for Industry Disputes (Industry Code), which address deficient claims (the “deficient claims rules”), state that the Director of FINRA Dispute Resolution (Director) will not serve a claim that is deficient. Under the current deficient claims rules, parties are permitted to correct all deficiencies; if all deficiencies are not corrected within 30 days from the time a party receives notice of a deficiency, the Director will close the case without serving the claim and refund part of the filing fee.⁵ However, the rules do not specify which date the Director will use as the date of filing if a party corrects a deficient claim within 30 days of receiving notice of a deficiency.

As amended, Rules 12307(b) and 13307(b) of the Codes state that if the deficiency is corrected within 30 days from the time the party receives notice of a deficiency, the claim will be considered filed on the date the initial statement of claim was filed. The amendments should help resolve issues concerning whether a claim is eligible for submission to arbitration under the Codes,⁶ and whether statutes of limitation, if applicable, should apply.

Effective Date Provisions

The amendments become effective on March 22, 2010, and apply to claims filed on or after that date.

Endnotes

- 1 Exchange Act Release No. 61311 (Jan. 7, 2010), 75 Federal Register 2179 (Jan. 7, 2010) (File No. SR-FINRA-2009-072).
- 2 Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.
- 3 *Id.*
- 4 Rule 12307 of the Customer Code and Rule 13307 of the Industry Code. A claim may be deficient because, for example, the party failed to file a properly signed and dated Submission Agreement, failed to pay all required filing fees, or failed to file the correct number of copies of the Submission Agreement, statement of claim or other supporting documents.
- 5 Rules 12307(b) and 13307(b) of the Codes.
- 6 Under the Codes, no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim. See Rule 12206(a) of the Customer Code and Rule 13206(a) of the Industry Code.

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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

* * * * *

Customer Code

12307. Deficient Claims

(a) No change.

(b) The Director will notify the claimant in writing if the claim is deficient. If the deficiency is corrected within 30 days from the time the claimant receives notice, the claim will be considered filed on the date the initial statement of claim was filed with the Director under Rule 12300(a). If all deficiencies are not corrected within 30 days [from the time the claimant receives notice], the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule under Rule 12900(c).

(c) No change.

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Industry Code

13307. Deficient Claims

(a) No change.

(b) The Director will notify the claimant in writing if the claim is deficient. If the deficiency is corrected within 30 days from the time the claimant receives notice, the claim will be considered filed on the date the initial statement of claim was filed with the Director under Rule 13300(a). If all deficiencies are not corrected within 30 days [from the time the claimant receives notice], the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule under Rule 13900(c).

(c) No change.

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