

Promissory Note Proceedings

Arbitration Panel Composition for Promissory Note Disputes

Effective Date: June 6, 2011

Executive Summary

Effective June 6, 2011, FINRA will appoint chair-qualified public arbitrators to panels resolving promissory note disputes instead of appointing chair-qualified public arbitrators also qualified to resolve statutory discrimination claims.¹

The amendments apply to all promissory note proceedings in which FINRA has not sent lists of arbitrators to the parties as of the effective date. The text of the amendments is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

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Background & Discussion

In 2009, FINRA implemented new procedures to expedite the administration of cases that solely involve a brokerage firm's claim that an associated person failed to pay money owed on a promissory note.² Under the procedures, FINRA appoints a single chair-qualified public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims (a statutory discrimination-qualified arbitrator)³ to resolve the dispute.⁴ These specially qualified arbitrators are public chair-qualified arbitrators who also are attorneys familiar with employment law and have at least ten years of legal experience. In addition, they may not have represented primarily the views of employers or of employees within the last five years. FINRA proposed using statutory discrimination qualified arbitrators because of the depth of their experience and their familiarity with employment law.

May 2011

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives

Key Topics

- ▶ Arbitration
- ▶ Associated Person
- ▶ Code of Arbitration Procedure
- ▶ Promissory Note

Referenced Rules & Notices

- ▶ Notice 09-48
- ▶ Rule 12400 (c)
- ▶ Rule 13802
- ▶ Rule 13806

Since implementing the new procedures, FINRA found that promissory note cases did not require such extensive experience or depth of knowledge. In a majority of completed cases, arbitrators decided the case on the pleadings and the respondent broker did not appear. In addition, the number of promissory note cases has more than doubled in the past two years. As a result of this substantial increase, it became more difficult to appoint panels in these cases using only statutory discrimination-qualified arbitrators. Therefore, FINRA amended the Code of Arbitration Procedure for Industry Disputes (Industry Code) to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a statutory discrimination qualified arbitrator. Chair-qualified arbitrators have completed chair training and are attorneys who have served through award on at least two cases, or, if not attorneys, are arbitrators who have served through award on at least three cases.⁵ The rule amendments ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve these matters.

Effective Date

The amendments to the Industry Code are effective on June 6, 2011, and apply to all promissory note proceedings in which FINRA has not sent lists of arbitrators to the parties.

Endnotes

- 1 See Securities Exchange Act Rel. No. 64226 (April 7, 2011), 76 Federal Register 20741 (April 13, 2011) and Rel. No. 64226A (April 13, 2011), 76 Federal Register 21932 (April 19, 2011) (File No. SR-FINRA 2011-005).
- 2 See Securities Exchange Act Rel. No. 34-60132 (June 17, 2009), 74 FR 30191 (June 24, 2009) (File No. SR-FINRA-2009-015). FINRA announced implementation of New Rule 13806 (Promissory Note Proceedings) in [Regulatory Notice 09-48](#). The effective date was September 14, 2009.
- 3 See Rule 13802(c)(3).
- 4 Under Rule 13806, if an associated person does not file an answer, or files an answer but does not assert any counterclaims or third party claims, regardless of the amount in dispute, a single statutory discrimination-qualified arbitrator decides the case. If an associated person files a counterclaim or third-party claim, FINRA bases panel composition on the amount of the counterclaim or third-party claim. For counterclaims and third-party claims that are not more than \$100,000, FINRA appoints a single statutory discrimination-qualified arbitrator. For counterclaims and third-party claims of more than \$100,000, FINRA appoints a three-arbitrator panel comprising a statutory discrimination-qualified arbitrator, a public arbitrator and a non-public arbitrator.
- 5 See Rule 12400(c).

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Attachment A

New language is underlined; deletions are in brackets.

Code of Arbitration Procedure for Industry Disputes

* * *

13806 Promissory Note Proceedings

(a) – (b) No change.

(c) Composition of Panel

(1) If the panel consists of one arbitrator, the arbitrator will be a public arbitrator [qualified to resolve a statutory discrimination claim as set forth in Rule 13802(c)(3)] selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes, unless the parties agree in writing otherwise.

(2) If the panel consists of three arbitrators, one arbitrator will be a public arbitrator [who meets the qualifications in Rule 13802(c)(3)] selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes, unless the parties agree in writing otherwise; one arbitrator will be selected from the roster of public arbitrators; and one arbitrator will be selected from the roster of non-public arbitrators. [The arbitrator who meets the criteria in Rule 13802(c)(3) will serve as the chairperson of the panel.]

(3) If the Director appoints a panel pursuant to (c)(1) above, and an associated person subsequently files a counterclaim or third party claim that requires appointment of a three-arbitrator panel, the appointed arbitrator will remain on the panel, and will serve as chairperson. In addition, one arbitrator will be selected from the roster of public arbitrators; and one arbitrator will be selected from the roster of non-public arbitrators.

(d) – (f) No change.

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