

Regulatory Notice

11-23

Motion Practice

Five-Day Period for Replies to Responses to Motions in Arbitration

Effective Date: June 6, 2011

Executive Summary

Effective June 6, 2011, a moving party (the party that makes the original motion in an arbitration) will have a five-day period to reply to a response to a motion.¹ This five-day period gives parties an opportunity to brief fully the issues in dispute, and ensures that arbitrators deciding a motion have all the motion papers before issuing a final decision.

The amendments to the Customer and Industry Codes of Arbitration Procedure (the Codes) apply to motions in all cases and are set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Richard W. Berry, Senior Vice President and Director of Case Administration and Regional Office Services, Dispute Resolution (DR), at (212) 858-4307 or richard.berry@finra.org; or
- ▶ Margo A. Hassan, Assistant Chief Counsel, DR, at (212) 858-4481 or margo.hassan@finra.org.

Background & Discussion

The Codes specify time periods for a party to respond to a motion, including a motion to dismiss. They do *not* provide expressly for a moving party to reply to a response. FINRA staff observed that occasionally, the moving party submitted a reply to a response. FINRA's practice had been to forward the reply to the arbitrators, even when FINRA receives the reply after it has already sent the motion and response to the arbitrators. Since the Codes do not prescribe a time period for replying to responses to motions, there have been instances where arbitrators reviewed the motion papers and even ruled on a motion before receiving a moving party's reply. On June 21, 2010, FINRA

May 2011

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives

Key Topics

- ▶ Arbitration
- ▶ Codes of Arbitration Procedure
- ▶ Motions

Referenced Rules & Notices

- ▶ Rule 12206
- ▶ Rule 12503
- ▶ Rule 12504
- ▶ Rule 13206
- ▶ Rule 13503
- ▶ Rule 13504



Financial Industry Regulatory Authority

revised its practice relating to replies to responses to motions and published [*Notice to Parties—Time to Reply to Objections*](#) on its website, stating that moving parties have five calendar days from receipt of a response to a motion to submit a reply to the response.

FINRA amended Rules 12206 and 13206 (Time Limits), Rules 12503 and 13503 (Motions), and Rules 12504 and 13504 (Motions to Dismiss) to provide a moving party with a five-day period to reply to a response to a motion. The amendments codify FINRA's current practice, as outlined in the Notice to Parties, and make it transparent. The amendments also provide parties with an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all of the motion papers before issuing a final decision on the motion.

Effective Date

The amendments to the Codes are effective on June 6, 2011, and apply to motions in all cases.

Endnotes

- 1 See Securities Exchange Act Rel. No. 64225 (April 7, 2011), 76 Federal Register 20757 (April 13, 2011) (File No. SR-FINRA-2011-006).

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

12206. Time Limits

(a) No Change.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(2) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 90 days before a scheduled hearing, and parties have 30 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(3) – (10) No change.

(c) – (d) No change.

* * *

12503. Motions

(a) – (b) No change.

(c) Replying to Responses to Motions

Parties have 5 days from the receipt of a response to a motion to reply to the response unless the responding party agrees to an extension of time, or the Director or the panel decides otherwise. Replies to responses must be served directly on each other party, at the same time and in the same manner. Replies to responses must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

[c] (d) Authority to Decide Motions

(1) – (5) No change.

* * *

12504. Motions to Dismiss

(a) Motions to Dismiss Prior to Conclusion of Case in Chief

(1) Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(4) - (11) No change.

(b) – (e) No change.

* * *

Industry Code

13206. Time Limits

(a) No change.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

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(3) – (10) No change.

(c) – (d) No change.

* * *

13503. Motions

(a) – (b) No change.

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Parties have 5 days from the receipt of a response to a motion to reply to the response unless the responding party agrees to an extension of time, or the Director or the panel decides otherwise. Replies to responses must be served directly on each other party, at the same time and in the same manner. Replies to responses must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

[c] (d) Authority to Decide Motions

(1) – (5) No change.

* * *

13504. Motions to Dismiss**(a) Motions to Dismiss Prior to Conclusion of Case in Chief**

(1) Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion. Moving parties may reply to responses to motions. Any such reply must be made within 5 days of receipt of a response.

(4) – (11) No change.

(b) – (e) No change.

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