

Arbitration Award Offsets

SEC Approves Amendments to the Codes of Arbitration Procedure Regarding Award Offsets

Effective Date: October 24, 2016

Executive Summary

The SEC has approved¹ FINRA's rule change amending Rule 12904 (Awards) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13904 (Awards) of the Code of Arbitration Procedure for Industry Disputes (Industry Code) to provide that absent specification to the contrary in an award, when arbitrators order opposing parties to make payments to one another, the monetary awards shall offset and the party assessed the larger amount shall pay the net difference.

The amendments are effective for arbitration awards rendered on or after October 24, 2016.

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

FINRA Rule 12904 of the Customer Code and Rule 13904 of the Industry Code address awards issued by arbitrators at FINRA's arbitration forum. The rules provide that awards issued by arbitrators must be in writing and signed by a majority of the arbitrators or as required by applicable law. In addition, the rules require that awards include, among other matters, a statement of the damages and other relief awarded, and that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed in a court of competent jurisdiction.

September 2016

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management

Key Topics

- ▶ Arbitration
- ▶ Award Offsets
- ▶ Codes of Arbitration Procedure

Referenced Rules & Notices

- ▶ FINRA Rule 12904
- ▶ FINRA Rule 13904

Sometimes arbitrators order opposing parties in a case to pay each other monetary damages. Prior to the amendments, FINRA Rules 12904 and 13904 were silent as to award offsets. Accordingly, when arbitrators order opposing parties in a case to make payments to each other, but do not specify whether the party that owes the higher amount must pay the net difference, the lack of clarity has resulted in parties asking arbitrators to revise an award after a case has closed or in post-award litigation. For example, arbitrators may award damages to a firm because an associated person failed to pay money owed on a promissory note and award a lesser amount to the associated person on a counterclaim. If the arbitrators do not specify that the awards should be offset against each other, the firm may be required to pay the counterclaim even if the associated person refuses or is unable to pay the larger amount. The offset issue could also arise in customer cases, such as those involving margin account disputes.

To address the lack of clarity in the rules regarding award offsets, FINRA amended Rules 12904(j) and 13904(j) to provide that, absent specification to the contrary, when arbitrators order opposing parties to make payments to one another, the monetary awards shall offset, and the party assessed the larger amount shall pay the net difference. The amendments streamline the payment of arbitration awards and mitigate the risk of failure to pay by an opposing party that may arise when multiple parties in a dispute are found to owe non-equivalent awards simultaneously.

Effective Date

The amendments are effective for arbitration awards rendered on or after October 24, 2016.

Endnotes

1. See Securities Exchange Act Release No. 78557 (August 11, 2016), 81 FR 54901 (August 17, 2016) (Order Approving File No. SR-FINRA-2016-015).

Attachment A

Customer Code

Rule 12904. Awards

(a) – (d) No change.

(e) The award shall contain the following:

[•] (1) The names of the parties;

[•] (2) The name of the parties' representatives, if any;

[•] (3) An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties;

[•] (4) A summary of the issues, including the type(s) of any security or product, in controversy;

[•] (5) The damages and other relief requested;

[•] (6) The damages and other relief awarded;

[•] (7) A statement of any other issues resolved;

[•] (8) The allocation of forum fees and any other fees allocable by the panel;

[•] (9) The names of the arbitrators;

[•] (10) The dates the claim was filed and the award rendered;

[•] (11) The number and dates of hearing sessions;

[•] (12) The location of the hearings; and

[•] (13) The signatures of the arbitrators.

(f) – (i) No change.

(j) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Absent specification to the contrary in the award, when arbitrators order opposing parties to make payments to one another, the monetary awards shall offset, and the party assessed the larger amount shall pay the net difference. An award shall bear interest from the date of the award:

[•] (1) If not paid within 30 days of receipt;

[•] (2) If the award is the subject of a motion to vacate which is denied; or

[•] (3) As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

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Industry Code**Rule 13904. Awards**

(a) – (d) No change.

(e) The award shall contain the following:

- [•] (1) The names of the parties;
- [•] (2) The name of the parties' representatives, if any;
- [•] (3) An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties;
- [•] (4) A summary of the issues, including the type(s) of any security or product, in controversy;
- [•] (5) The damages and other relief requested;
- [•] (6) The damages and other relief awarded;
- [•] (7) A statement of any other issues resolved;
- [•] (8) The allocation of forum fees and any other fees allocable by the panel;
- [•] (9) The names of the arbitrators;
- [•] (10) The dates the claim was filed and the award rendered;
- [•] (11) The number and dates of hearing sessions;
- [•] (12) The location of the hearings; and
- [•] (13) The signatures of the arbitrators.

(f) – (i) No change.

(j) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Absent specification to the contrary in the award, when arbitrators order opposing parties to make payments to one another, the monetary awards shall offset, and the party assessed the larger amount shall pay the net difference. An award shall bear interest from the date of the award:

- [•] (1) If not paid within 30 days of receipt;
- [•] (2) If the award is the subject of a motion to vacate which is denied; or
- [•] (3) As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

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