

## Increases to Arbitrator Honoraria and Certain Arbitration Fees

### SEC Approves Amendments to the Codes of Arbitration Procedure to Increase Arbitrator Honoraria by Increasing Arbitration Filing Fees, Member Surcharges and Process Fees and Hearing Session Fees

Effective Date: December 15, 2014

#### Executive Summary

The Code of Arbitration Procedure for Customer Disputes (Customer Code) and the Code of Arbitration Procedure for Industry Disputes (Industry Code) (together, codes) govern the payments that FINRA makes to its arbitrators for the services they provide to FINRA's dispute resolution forum, as well as the fees assessed to the parties for arbitration proceedings. Honoraria payments to arbitrators have not been increased in fifteen years. The amendments increase the honoraria arbitrators receive for participating in hearing sessions, serving as a chairperson, deciding contested subpoena motions, and deciding simplified arbitration cases. To fund the increase in the payments to arbitrators, the SEC approved amendments to the codes to increase certain arbitration fees, such as the arbitration filing fees, member surcharges and process fees, and hearing session fees.<sup>1</sup>

The amendments are effective for arbitration cases filed on or after December 15, 2014. The arbitrator honoraria and fee increases will not apply to arbitration cases filed prior to the effective date.

The text of the amendments is available at [www.finra.org/notices/14-49](http://www.finra.org/notices/14-49).

#### November 2014

##### Notice Type

- ▶ Rule Amendment

##### Suggested Routing

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

##### Key Topics

- ▶ Arbitration
- ▶ Arbitrators
- ▶ Fees
- ▶ Honoraria

##### Referenced Rules & Notices

- ▶ FINRA Rule 12214
- ▶ FINRA Rule 12800
- ▶ FINRA Rule 12900
- ▶ FINRA Rule 12901
- ▶ FINRA Rule 12902
- ▶ FINRA Rule 12903
- ▶ FINRA Rule 13214
- ▶ FINRA Rule 13800
- ▶ FINRA Rule 13900
- ▶ FINRA Rule 13901
- ▶ FINRA Rule 13902
- ▶ FINRA Rule 13903

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## Background & Discussion

FINRA has amended the codes to increase arbitrator honoraria, which are payments that FINRA makes to its arbitrators for the services they provide to FINRA's dispute resolution forum. It will be the first increase in fifteen years. The increases are needed to help the arbitration forum retain a roster of high-quality arbitrators and attract qualified individuals who possess the skills necessary to manage arbitration cases and consider thoroughly all arbitration issues presented, which are essential elements for FINRA to meet its regulatory objective of protecting the investing public.

To fund the honoraria increases, FINRA has amended the codes to increase the member surcharges and process fees for claims larger than \$250,000 and the filing fees and hearing session fees for claims of more than \$500,000. In addition, the amendments increase surcharges, process fees, filing fees and hearing session fees for non-monetary or unspecified claims.

## Increases to Arbitrator Honoraria

### Hearing Session Payments

Under amended Rules 12214(a) and 13214(a), arbitrators will receive \$300 for each hearing session<sup>2</sup> in which the arbitrator participates. A typical day during an arbitration has two hearing sessions. Thus, under the amendments, arbitrators would receive \$600 per day, if they participate in two hearing sessions in a day, an increase of 50 percent per day.

### Additional Chairperson Honoraria

Chairpersons are often the arbitrators on FINRA's rosters with the most experience. In recognition of their increased experience and extra responsibilities during a hearing, FINRA pays chairpersons additional honoraria per hearing day. FINRA has amended Rules 12214(a) and 13214(a) to increase the chairperson honoraria to \$125, an increase of 67 percent per day. The chairperson receives the additional honoraria for each day the person serves as chair, regardless of the number of hearing sessions scheduled per day.

### Contested Subpoena Motions

Arbitrators receive honoraria when they decide contested motions for the issuance of a subpoena without a hearing (contested subpoena motions).<sup>3</sup> A contested subpoena motion includes a motion requesting the issuance of a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena and any other documents supporting a party's position.<sup>4</sup> Under amended Rules 12214(d) and 13214(d), FINRA will assess a \$250 fee to the parties to be paid to each arbitrator who participates in deciding the contested subpoena motion to cover the cost of the honoraria, which is a 25 percent increase. The honoraria will be paid on a per case basis, regardless of the number of contested subpoena motions decided by an arbitrator or panel during the case. Thus, the maximum amount that the parties could pay for any one case will be \$750.

### Simplified Cases

When a claimant<sup>5</sup> files an arbitration claim in which the amount in dispute, excluding interest and expenses (claim amount) is \$50,000 or less, one arbitrator decides the case based solely on the documents provided by the parties. No hearings take place unless the customer requests a hearing.<sup>6</sup> In the forum, these cases are referred to as simplified arbitration cases. Under amended Rules 12800(f) and 13800(f), the arbitrator who decides simplified cases based solely on the documents provided by the parties will receive \$350 per case, an increase of 180 percent per simplified case.

### Application

FINRA noted in its rule filing that it was increasing arbitration filing fees, member surcharge and process fees, and hearing session fees for the primary purpose of increasing arbitrator honoraria.<sup>7</sup> Thus, the increase in arbitration fees is intended to fund the increase in arbitrator honoraria. If FINRA were to extend the honoraria increases to pending arbitration cases, the honoraria payments would not be properly funded, as the fees from the pending cases would be based on the old fee structure. Therefore, FINRA will apply the new honoraria rates to arbitration cases filed on or after the effective date, so that they are linked to the new fee structure discussed below.

## Increases to Certain Fees in Arbitration

### Member Surcharge

The codes provide that a surcharge will be assessed against each member that: (1) files a claim, counterclaim, cross claim or third party claim under the codes; (2) is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the codes; or (3) employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the codes.<sup>8</sup> Each member is assessed a member surcharge, based on the aggregate claim amount, when it is brought into the case, whether through a claim, counterclaim, cross claim or third party claim.

FINRA has amended Rules 12901 and 13901 to increase the member surcharges for claim amounts larger than \$250,000, as indicated in the amended rule language. The surcharge is a member fee only, which means that arbitrators cannot allocate it to an investor party.

### Member Process Fee

Currently, each member that is a party to an arbitration in which the claim amount is more than \$25,000 must pay process fees, which are assessed at specific milestones in each case. Specifically, FINRA assesses a non-refundable prehearing process fee of \$750 at the time the parties are sent arbitrator lists and a non-refundable hearing process fee, based on the claim amount, when the parties are notified of the date and location of the hearing on the merits.<sup>9</sup> When the parties receive the arbitrator lists or notification of the hearing, FINRA assesses each member party the applicable process fee, whether the member is a claimant or respondent<sup>10</sup> in the case.

Under amended Rules 12903 and 13903, the member process fees will increase for claim amounts larger than \$250,000. Further, FINRA will combine the two process fees, the non-refundable prehearing process fee and non-refundable hearing process fee, into one fee, which would be due at the time the parties are sent the arbitrator lists. Like the surcharge, the process fee is a member fee only and, thus, cannot be allocated to an investor party.

### Filing Fees

Under the codes, a customer, associated person, member or other non-member who files a claim, counterclaim, cross claim or third party claim must pay a filing fee to initiate an arbitration.<sup>11</sup> The filing fee consists of two parts—a non-refundable fee, which FINRA keeps when a claim is filed, and a refundable deposit, which FINRA may return in whole or in part to the party that filed the claim in certain circumstances.<sup>12</sup> FINRA has amended Rules 12900 and 13900 to increase the filing fees for investors, associated persons, members or other non-members who file claims of more than \$500,000.<sup>13</sup> Most of the filing fee increases have been added to the refundable portion of the filing fee.

### Hearing Session Fees

A hearing session is a meeting of the parties and arbitrators.<sup>14</sup> Hearing session fees are assessed for each hearing, pre-hearing and injunctive hearing conducted.<sup>15</sup> A hearing session may be conducted by one or three arbitrators, depending on the claim amount.<sup>16</sup> FINRA has amended Rules 12902 and 13902 to increase the hearing session fees for claims of more than \$500,000. Under the amended rules, the fees for a hearing session with one arbitrator will not change. However, for hearing sessions with three arbitrators, the hearing session fees will increase for claim amounts starting at \$500,000.01. Arbitrators allocate the hearing session fees among the parties in an arbitration.

### Non-Monetary or Unspecified Damages

If a party files a claim that does not request or specify money damages, that claim is considered an unspecified claim. Each of the fee categories (discussed above) contains a fee amount for unspecified claims.<sup>17</sup> This amendment increases surcharges, process fees, filing fees, and hearing session fees for non-monetary or unspecified claims.

### Effective Date

The amendments are effective for arbitration cases filed on or after December 15, 2014. The new honoraria and fee increases will not apply to arbitration cases filed prior to the effective date.

## Endnotes

1. See Securities Exchange Act Release No. 73245 (Sept. 29, 2014), 79 FR 59876 (Oct. 3, 2014) (Order Approving File No. SR-FINRA-2014-026).
2. The term “hearing session” means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference. Rules 12100(n) and 13100(n).
3. See Rules 12214(d) and 13214(d).
4. See Rules 12214(d)(2) and 13214(d)(2).
5. A “claimant” is a party that files the statement of claim that initiates an arbitration. Rules 12100(e) and 13100(e).
6. See Rules 12800 and 13800.
7. See Securities Exchange Act Rel. No. 72479 (June 26, 2014), 79 FR 37786 (July 2, 2014) at 37786.
8. See Rules 12901 and 13901.
9. If a claim amount is less than \$25,000, the member would not be assessed any process fees. If a claim amount is between \$25,000 and \$50,000, FINRA would assess a non-refundable prehearing process fee, but not the non-refundable hearing process fee. See Rules 12903(a) and 13903(a).
10. A “respondent” is a party against whom a statement of claim or third party claim has been filed. A claimant against whom a counterclaim has been filed is not a respondent for purposes of the Code. Rule 12100(v) and Rule 13100(w).
11. See Rules 12900(a) and 13900(a).
12. The refundable portion correlates to the hearing session fees for the relevant claim size. A claimant may be entitled to a partial refund under the circumstances described in Rules 12900(c) and 13900(c). FINRA has also amended the refund amounts that correspond to the filing fee increases.
13. If an investor demonstrates financial hardship, FINRA will waive the filing fees. See FINRA’s [Fee Waivers](#) Web page.
14. See note 2, *supra*.
15. See Rules 12902(a) and 13902(a).
16. See Rules 12401 and 13401.
17. See Rules 12900(b)(2), 12901(a)(2), 12902(a)(2), and 12903(a). See also Rules 13900(b)(2), 13901(a), 13902(a)(2) and 13903(a).