

Arbitrator Honorarium

SEC Approves Amendments to the Codes of Arbitration Procedure to Establish a \$200 Honorarium for Contested Subpoenas or Orders

Effective Date: January 7, 2019

Summary

The Securities and Exchange Commission (SEC) approved¹ amendments to FINRA's customer and industry arbitration rules to pay each arbitrator a \$200 honorarium to decide without a hearing session a contested subpoena request or a contested order for production or appearance.

The amendments are effective for cases filed on or after January 7, 2019.

Questions concerning this *Notice* should be directed to:

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Background & Discussion

Under the Codes of Arbitration Procedure for Customer and Industry Disputes (Codes), the parties exchange documents and information to prepare for the arbitration through the discovery process.² If an individual or entity objects to a discovery request, the party seeking the documents or information may request that the panel³ issue a subpoena⁴ or an order of production or appearance.⁵

A party may request that the panel issue a subpoena to parties in an arbitration, non-parties, as well as entities and individuals who are not FINRA members.⁶ If the request will be served on a FINRA member, FINRA rules favor the use of orders rather than subpoenas, unless circumstances dictate otherwise.⁷ A party's request (or motion) to issue a subpoena or order becomes "contested" if there is an objection raised to the scope or propriety of the subpoena or order.

December 10, 2018

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal

Key Topics

- ▶ Arbitration
- ▶ Codes of Arbitration Procedure
- ▶ Contested Orders for Production or Appearance
- ▶ Contested Subpoena Requests
- ▶ Payment of Arbitrators

Referenced Rules & Notices

- ▶ FINRA Rule 12214
- ▶ FINRA Rule 13214

FINRA has amended Rules 12214(c) and 13214(c) of the Codes to provide that FINRA will pay each arbitrator an honorarium of \$200 to decide, without a hearing session: (i) a discovery-related motion; (ii) a motion that contains one or more⁸ contested subpoena requests or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena requests and contested orders for production or appearance.⁹

Effective Date

The amendments are effective for cases filed on or after January 7, 2019.

Endnotes

- 1 See Securities Exchange Act Release No. 84418 (October 12, 2018), 83 *Federal Register* 52857 (October 18, 2018) (Order Approving File No. SR-FINRA-2018-026).
- 2 The Codes require parties to cooperate with each other and exchange documents or information to expedite the arbitration. See FINRA Rules 12505 and 13505.
- 3 The claim amount or non-monetary claim determines whether a single arbitrator or panel will decide the arbitration case. See FINRA Rules 12401 and 13401. The chairperson of a panel will decide the contested subpoena or order request without a hearing session.
- 4 See FINRA Rules 12512 and 13512.
- 5 See FINRA Rules 12513 and 13513.
- 6 See FINRA Rules 12512(a)(1) and 13512(a)(1).
- 7 See *supra* note 5.
- 8 The rules will permit a party or parties to use one motion to request issuance of one or more subpoenas or orders. Thus, if a party or the parties request one or more subpoenas in one motion, for example, and one or all of the subpoena requests become contested, each arbitrator who decides the motion will receive one honorarium payment of \$200.
- 9 When there is a contested motion requesting the issuance of one or more subpoenas or orders, FINRA will send to the arbitrator or panel the motion, the draft subpoena(s) or order(s), a written objection from the party opposing the motion, and any other documents supporting a party's position.

Attachment A

Customer Code

12214. Payment of Arbitrators

(a) Except as provided in paragraph (b) and in Rule 12800, FINRA will pay the panel an honorarium, as follows:

[•] (1) \$300 to each arbitrator for each hearing session in which he or she participates;

[•] (2) an additional \$125 per day to the chairperson for each hearing on the merits;

[•] (3) \$50 for travel to a hearing session that is postponed pursuant to Rule 12601; and

[•] (4) \$600 for each arbitrator if a hearing session other than a prehearing conference is postponed within 10 days before a scheduled hearing session pursuant to Rules 12601(a)(2) and (b)(2).

(b) No change.

(c) Payment for Deciding Discovery-Related Motions [Without a Hearing Session], Contested Subpoena Requests, and Contested Orders for Production or Appearance without a Hearing Session

(1) FINRA will pay each arbitrator an honorarium of \$200 to decide without a hearing session: (i) a discovery-related motion [without a hearing session], (ii) a motion that contains one or more contested subpoena requests or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena requests and contested orders for production or appearance. This paragraph does not apply to cases administered under Rule 12800.

(2) For purposes of paragraph (c)(1):

i. a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion;

ii. a contested motion requesting the issuance of one or more subpoenas shall include the motion, the draft subpoena(s), a written objection from the party opposing the motion, and any other documents supporting a party's position; and

iii. a contested motion requesting the issuance of one or more orders for production or appearance shall include the motion, the draft order(s), a written objection from the party opposing the motion, and any other documents supporting a party's position.

(3) No change.

(d) [Payment for Deciding Contested Subpoena Requests Without a Hearing Session]

[(1) The honorarium for deciding one or more contested motions requesting the issuance of a subpoena without a hearing session shall be \$250. The honorarium shall be paid on a per case basis to each arbitrator who decides the contested motion(s). The parties shall not be assessed more than \$750 in fees under this paragraph in any arbitration proceeding. The honorarium shall not be paid for cases administered under Rule 12800.]

[(2) For purposes of paragraph (d)(1), a contested motion requesting the issuance of a subpoena shall include 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.]

[(3) The panel will allocate the cost of the honorarium under paragraph (d)(1) to the parties pursuant to Rule 12902(c).]

[(e)] Payment for Explained Decisions

(1) No change.

(2) No change.

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Industry Code

13214. Payment of Arbitrators

(a) Except as provided in paragraph (b), Rule 13800, and Rule 13806(f), FINRA will pay the panel an honorarium, as follows:

[•] (1) \$300 to each arbitrator for each hearing session in which he or she participates;

[•] (2) an additional \$125 per day to the chairperson for each hearing on the merits;

[•] (3) \$50 for travel to a hearing session that is postponed pursuant to Rule 13601; and

[•] (4) \$600 for each arbitrator if a hearing session other than a prehearing conference is postponed within 10 days before a scheduled hearing session pursuant to Rules 13601(a)(2) and (b)(2).

(b) No change.

(c) Payment for Deciding Discovery-Related Motions [Without a Hearing Session], Contested Subpoena Requests, and Contested Orders for Production or Appearance without a Hearing Session

(1) FINRA will pay each arbitrator an honorarium of \$200 to decide without a hearing session: (i) a discovery-related motion [without a hearing session], (ii) a motion that contains one or more contested subpoena requests or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena requests and contested orders for production or appearance. This paragraph does not apply to cases administered under Rule 13800 or pursuant to Rule 13806(d)(1).

(2) For purposes of paragraph (c)(1):

i. a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion;

ii. a contested motion requesting the issuance of one or more subpoenas shall include the motion, the draft subpoena(s), a written objection from the party opposing the motion, and any other documents supporting a party's position; and

iii. a contested motion requesting the issuance of one or more orders for production or appearance shall include the motion, the draft order(s), a written objection from the party opposing the motion, and any other documents supporting a party's position.

(3) No change.

(d) [Payment for Deciding Contested Subpoena Requests Without a Hearing Session]

[(1) The honorarium for deciding one or more contested motions requesting the issuance of a subpoena without a hearing session shall be \$250. The honorarium shall be paid on a per case basis to each arbitrator who decides the contested motion(s). The parties shall not be assessed more than \$750 in fees under this paragraph in any arbitration proceeding. The honorarium shall not be paid for cases administered under Rule 13800 or pursuant to Rule 13806(d)(1).]

[(2) For purposes of paragraph (d)(1), a contested motion requesting the issuance of a subpoena shall include 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.]

[(3) The panel will allocate the cost of the honorarium under paragraph (d)(1) to the parties pursuant to Rule 13902(c).]

[(e)] Payment for Explained Decisions

(1) No change.

(2) No change.