

Codes of Arbitration Procedure: FINRA Announces Amendments

February 23, 2024

On February 6, 2024, the Financial Industry Regulatory Authority (FINRA) published [Regulatory Notice 24-03](#), which announced certain amendments to the Codes of Arbitration Procedure (the Codes). Among those were changes to the arbitrator selection process, as well as changes to the requirements for prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, and claim and case dismissals. The amendments become effective March 4, 2024. Below is a brief summary of the changes.

Changes to the Arbitrator Selection Process

Conflicts of Interest

For the arbitrator selection process, the Codes require that a list selection algorithm randomly generate a list of arbitrators from a designated roster of available arbitrators based on the designated hearing location for a given matter. While the Codes previously provided that potential arbitrators would be excluded based on current conflicts of interest identified in the algorithm, the recent amendments codified that, once the list is generated, FINRA Dispute Resolution Services (DRS) will conduct a manual review for other conflicts not identified by the list selection algorithm.

Written Explanation of Director's Decision

In September 2022, DRS updated its policy to provide a written explanation whenever a party-initiated challenge to remove an arbitrator is granted or denied, regardless of whether an explanation is requested by either party. The amendments codify this practice.

Challenge to Remove an Arbitrator

While arbitrators have long been subject to removal for conflict of interest or bias, either on challenge by a party or on the Director's initiative, the Codes were previously unclear on the timing for such challenges. The amendments clarify that these challenges can be made at any time after the generation of the arbitrator ranking list but before the first hearing session in a matter.

Arbitration Procedure Changes

Number of Hearing Sessions Per Day

Arbitrators are paid for each hearing session in which they participate, and as defined by the Codes, a "hearing session" is any meeting between the parties and arbitrators of four hours or less. The amendments address a

misunderstanding among some arbitrators that they may be compensated for time spent outside of the hearing session, such as on lunch breaks, by revising the definition of “hearing session” to specify that, in one day, the next hearing session begins after four hours of hearing time has elapsed.

Redacting Confidential Information

Parties have long been required to redact personal confidential information (PCI), such as Social Security numbers, taxpayer ID numbers, or financial account numbers when submitting pleadings and supporting documentation to DRS. This requirement, however, was not previously extended to claims proceedings under FINRA’s simplified arbitration rules. Due to increased concerns around identity theft and fraud in the securities industry, the amendments now apply the PCI redaction requirement to parties in simplified arbitrations.

Amending Pleadings or Filing Third-Party Claims

Prior to the amendments, the Codes did not include express procedures related to filing third-party claims other than those filed in an answer to a statement of claim. For the first time, the amendments specify that the procedures applicable to amending pleadings apply equally to the filing and serving of third-party claims.

Virtual Prehearing Conferences

Prehearing conferences have historically been conducted telephonically. Based on experiences during the COVID-19 pandemic, participants in the FINRA arbitration process expressed a preference for holding prehearing conferences by video conference. DRS updated its policy in July 2022 so that all prehearing conferences are held by video conference. The amendments codify this policy by providing that prehearing conferences will generally be held by video conference unless the parties agree to, or the panel grants a motion for, another type of hearing session.

In-Person Hearings

On the other hand, final hearing sessions are generally held in person. The amendments clarify that hearings will generally be held in person unless the parties agree to, or the panel grants a motion for, another type of hearing session.

Dismissal of Proceedings for Insufficient Service

It has been common practice for arbitration panels to dismiss a claim or arbitration without prejudice if they find insufficient service. The amendments codify this practice by providing that the panel may dismiss without prejudice a claim or arbitration for lack of sufficient service upon a respondent.

Dismissal of Claimant’s Claims Requires Issuance of an Award

The Codes permit a panel to grant a motion to dismiss a party’s case at the conclusion of the case in chief, and it has been DRS’s standard practice to require the issuance of an award for such dismissals. The amendments codify this practice by requiring that if a panel dismisses all of a claimant’s claims at the conclusion of the case in chief, the decision must contain the requisite elements of a written award and must be made publicly available as an award.

The Takeaway

The amendments to the Codes of Arbitration Procedure introduced by FINRA, effective March 4, 2024, signify substantial enhancements aimed at improving the fairness, transparency, and efficiency of the arbitration process. These modifications are poised to streamline arbitration proceedings and reinforce trust in the regulatory framework governing financial disputes. If you have any questions, please reach out to the author or any member of McGlinchey's [Financial Services Litigation group](#).

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