

NASD Notice to Members 99-23

SEC Approves New
Arbitration Fees; Effective
March 18, 1999

Suggested Routing

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Executive Summary

On February 16, 1999, the Securities and Exchange Commission (SEC) approved amendments to the fee schedules for customer and member arbitrations contained in Rules 10205 and 10332 of the National Association of Securities Dealers, Inc. (NASD[®]) Code of Arbitration Procedure (Code). This is the first increase in these fees since 1990. The filing fees and hearing session deposits are being increased to permit the NASD to cover more of its costs of operating the arbitration forum from revenue generated by the users of the forum; however, a large portion of the operating costs are covered by surcharges and other fees imposed only on members. In addition, even though filing fees and hearing session deposits are being increased, the small percentage of arbitration fee revenue paid by customers versus the large percentage paid by members will remain approximately the same as in the past. Arbitrator honoraria are also being increased in order to attract and retain qualified arbitrators willing to devote the time necessary to thoroughly consider arbitration claims.

The filing fee and hearing session deposit increases will be effective on March 18, 1999, for all cases filed on or after the effective date of the amendments. The arbitrator honoraria increases will be effective for arbitrators appointed to hear cases filed on or after the effective date of the amendments. The text of the amendments, including the new fee schedules, follows this *Notice*.

Questions regarding this *Notice* may be directed to Tom Wynn, Associate Director, Office of Dispute Resolution, NASD Regulation, Inc. (NASD RegulationSM) at (212) 858-4392; or Elliott R. Curzon, Assistant General Counsel, NASD Regulation, at (202) 728-8451.

Background

Since its adoption of the Code in 1968, the NASD has subsidized a substantial portion of the cost of the arbitration program from general member assessment revenue. The current filing fee and hearing session deposit schedules in the Code have been in effect since 1990. Under the current schedule, only a relatively small portion of the cost of the program is paid by filing fees and hearing session deposits.

Because the NASD believes that the cost of the arbitration process should be borne by the users of the program, the organization has been engaged in an effort to develop a fee structure that accomplishes that goal without imposing significant burdens on public customers who bring arbitration claims to the NASD's forum. The first step toward that goal occurred in January 1998 when the NASD adopted a new process fee imposed entirely on member firms named as parties to arbitration proceedings (see *Notice to Members 98-01* (January 1998)). In addition, in July 1997, the NASD substantially increased the surcharge on members named as parties to arbitration proceedings. Both of these fees shift much of the cost of the arbitration program from general membership assessment revenue collected from all NASD members to specific fees imposed on members which are parties to arbitration proceedings.

The final step in revamping the fee structure is to increase the filing fees and hearing session deposits required for customer arbitrations and member arbitrations. In all cases, the NASD is attempting as much as possible to match the filing fees to the actual costs the NASD incurs in the average case. Similarly, the new hearing session deposit amounts reflect the NASD's actual costs of conducting hearings. Also, the initial costs to customers filing

arbitration claims will not increase substantially relative to the amount of the claim. Finally, because the NASD's experience shows that the large majority of fees assessed by arbitrators in an award are assessed against members and not customers, the NASD believes that the overall impact of the fee increases on customers will be small.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

IM-10104. Arbitrator's Honorarium

All persons [serving on panels of arbitrators pursuant to Rule 10104 of] selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate [while in the performance of said duties].

The honorarium shall be \$[150]200 for [a single] each hearing session [, \$225 for a double session], \$50 for travel to a canceled hearing, and \$[50]75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing [is \$75 per case] shall be \$125.

10205. Schedule of Fees for Industry and Clearing Controversies

(a) At the time of filing a Claim, Counterclaim, Third Party Claim, or Cross-Claim in an industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Rule 10201, above, a party who is a member shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts stated in paragraph (k) unless such fee or deposit is specifically waived by the Director of Arbitration. A party who is an associated person shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified for customer claimants in Rule 10332. If the associated person is a joint claimant with a member, the member shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified in paragraph (k) of this Rule. Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the paragraph (k) below.

(b) No change

(c) No change

(d) No change

(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee assessed on a party who is a member shall be \$500. If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the hearing session deposit to be remitted by a party shall be \$1000 [600]. These amounts may be adjusted by the Director of Arbitration or the panel of arbitrators may require the maximum amount specified in the schedule [1,000].

(f) No change

(g) No change

(h) No change

(i) If an eligible matter is submitted for arbitration as a large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000 [5,000,000].

(j) No change

(k) Schedule of Fees

Schedule of Fees

Amount in Dispute (Exclusive of Interest and Expenses)	Claim Filing Fee	Deposit for Cases to be Decided on the Paper Record		Hearing Session Deposit	
		[Simplified ¹]	One Arbitrator ^{1[2]}	Three Arbitrators ^{2[3]}	
\$.01 -- \$1,000	\$ 200 [500]	\$ 25 [75]	\$ 25 [300]	NA	
\$1,000.01-\$2,500	\$ 300 [500]	\$ 50 [75]	\$ 50 [300]	NA	
\$2,500.01-\$5,000	\$ 400 [500]	\$ 125 [75]	\$ 125 [300]	NA	
\$5,000.01-\$10,000	\$ 500	\$ 250 [75]	\$ 250 [300]	NA	
\$10,000.01-\$25,000	\$ 750	\$ 300	\$ 450	NA	
\$25,000.01-\$30,000	\$1,000 [500]	NA	\$ 450 [300]	\$ 600	
\$30,000.01-\$50,000	\$1,000 [500]	NA	\$ 450 [300]	\$ 600	
\$50,000.01- \$100,000	\$1,000 [500]	NA	\$ 450 ³ [300 ⁴]	\$ 750 [600]	
\$100,000.01-\$500,000	\$1,000 [500]	NA	\$ 450 ³ [300 ⁴]	\$1,125 [750]	
\$500,000.01-\$1,000,000	\$1,250	NA	\$ 450 ³	\$1,200	
\$1,000,000.01-\$5,000,000	\$2,000 [500]	NA	\$ 450 ³ [300 ⁴]	\$1,200 [1,000]	
[Over]\$5,000,000.01-					
\$10,000,000.00	\$2,500 [500]	NA	\$ 450 ³ [300 ⁴]	\$1,200 [1,500]	
Over \$10,000,000	\$5,000	NA	\$ 450 ³	\$1,200	

¹Simplified Arbitration (Without Hearing)

^{1[2]}The dispute is resolved by one arbitrator per hearing session, including pre-hearing conferences. [(Per Hearing Session)]

^{2[3]}The dispute is resolved by three (or more) arbitrators per hearing session. [(Per hearing session)]

^{3[4]}Fee applies only to pre-hearing conferences [Only] with a single arbitrator.

* * * *

10332. Schedule of Fees for Customer Disputes

	or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule	fees for claims over \$10,000,000 [\$5,000,000].
(a) No change		(i) No change
(b) No change	[\$1,000].	(j) No change
(c) No change	(f) No change	(k) Schedule of Fees
(d) No change	(g) No change	For purposes of the schedule of fees, the term "claim" includes Claims, Counterclaims, Third Party Claims, and Cross-Claims. Any such claim made by a customer or associated person is treated as a customer claim for purposes of the schedule of fees. Any such claim made by a member [or associated person of a member] is an industry claim.
(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee for a public customer shall be \$250 and the non-refundable filing fee for an industry party shall be \$500[.00]. The hearing session deposit to be remitted by a party shall be \$1000 [\$600]	(h) If an eligible matter is submitted for arbitration as a large and complex case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of	

Customer or Associated Person Claimant

Amount in Dispute (Exclusive of Interest and Expenses)	Claim Filing Fee	Deposit for Cases to be Decided on the Paper Record		Hearing Session Deposit	
		[Simplified ¹]	One Arbitrator ^{1[2]}	Three Arbitrators ^{2[3]}	
\$.01 -- \$1,000	\$ 25 [15]	\$ 25 [15]	\$ 25 [15]	NA	
\$1,000.01-\$2,500	\$ 25	\$ 50 [25]	\$ 50 [25]	NA	
\$2,500.01-\$5,000	\$ 50	\$ 125 [75]	\$ 125 [100]	NA	
\$5,000.01-\$10,000	\$ 75	\$ 250 [75]	\$ 250 [200]	NA	
\$10,000.01-\$25,000	\$125 [100]	\$ 300 [NA]	\$ 450	NA	
\$25,000.01-\$30,000	\$150	NA	\$ 450 [300]	\$ 600 [400]	
\$30,000.01-\$50,000	\$175 [120]	NA	\$ 450 [300]	\$ 600 [400]	
\$50,000.01-\$100,000	\$225 [150]	NA	\$ 450 ³ [300 ⁴]	\$ 750 [500]	
\$100,000.01-\$500,000	\$300 [200]	NA	\$ 450 ³ [300 ⁴]	\$1,125 [750]	
\$500,000.01-\$1,000,000	\$375 [250]	NA	\$ 450 ³ [300 ⁴]	\$1,200 [1,000]	
\$1,000,000.01-\$3,000,000	\$500	NA	\$ 450 ³	\$1,200	
\$3,000,000.01-\$5,000,000	\$600	NA	\$ 450 ³	\$1,200	
[Over]\$5,000,000.01- \$10,000,000	\$600 [300]	NA	\$ 450 ³ [300 ⁴]	\$1,200 [1,500]	
Over \$10,000,000	\$600	NA	\$ 450 ³	\$1,200	

¹Simplified Arbitration (Without Hearing)]

^{1[2]}The dispute is resolved by o[O]ne a[A]rbitrator per hearing session, including pre-hearing conferences. [(Per Hearing Session)]

^{2[3]}The dispute is resolved by t[T]hree [or more] a[A]rbitrators per hearing session. [(Per hearing session)]

^{3[4]}Fee applies only to p[P]re-hearing c[C]onferences [Only] with a single arbitrator.

Member [Industry] Claimant

Amount in Dispute (Exclusive of Interest and Expenses)	Claim Filing Fee	Deposit for Cases to be Decided on the Paper Record		Hearing Session Deposit	
		[Simplified ¹]	One Arbitrator ^{1[2]}	Three Arbitrators ^{2[3]}	
\$.01 -- \$1,000	\$ 200 [500]	\$ 25 [75]	\$ 25 [300]	NA	
\$1,000.01-\$2,500	\$ 300 [500]	\$ 50 [75]	\$ 50 [300]	NA	
\$2,500.01-\$5,000	\$ 400 [500]	\$ 125 [75]	\$ 125 [300]	NA	
\$5,000.01-\$10,000	\$ 500	\$ 250 [75]	\$ 250 [300]	NA	
\$10,000.01-\$25,000	\$ 750	\$ 300	\$ 450	NA	
\$25,000.01-\$30,000	\$1,000 [500]	NA	\$ 450 [300]	\$ 600	
\$30,000.01-\$50,000	\$1,000 [500]	NA	\$ 450 [300]	\$ 600	
\$50,000.01- \$100,000	\$1,000 [500]	NA	\$ 450 ³ [300 ⁴]	\$ 750 [600]	
\$100,000.01-\$500,000	\$1,000 [500]	NA	\$ 450 ³ [300 ⁴]	\$1,125 [750]	
\$500,000.01-\$1,000,000	\$1,250		\$ 450 ³	\$1,200	
\$1,000,000.01-\$5,000,000	\$2,000 [500]	NA	\$ 450 ³ [300 ⁴]	\$1,200 [1,000]	
[Over]\$5,000,000.01- \$10,000,000	\$2,500 [500]	NA	\$ 450 ³ [300 ⁴]	\$1,200 [1,500]	
Over \$10,000,000	\$5,000		\$ 450 ³	\$1,200	

¹Simplified Arbitration (Without Hearing)]

^{1[2]}The dispute is resolved by o[O]ne a[A]rbitrator per hearing session, including pre-hearing conferences. [(Per Hearing Session)]

^{2[3]}The dispute is resolved by t[T]hree [or more] a[A]rbitrators per hearing session. [(Per hearing session)]

^{3[4]}Fee applies only to p[P]re-hearing c[C]onferences [Only] with a single arbitrator.

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