

INFORMATIONAL

Arbitration Fees

NASD To Send Only One Written Notice Before Deducting Delinquent Arbitration Fees From CRD Account**SUGGESTED ROUTING**

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Internal Audit
- Legal & Compliance
- Senior Management

KEY TOPICS

- Arbitration
- CRD Account

Executive Summary

Effective November 1, 1999, the National Association of Securities Dealers, Inc. (NASD[®]) will deduct delinquent arbitration fees from funds maintained in a member's Central Registration Depository (CRDSM) account 60 calendar days after the date on a single invoice informing the member that the arbitration fees are due. If the member is represented by outside counsel which is the counsel of record, the single invoice will only be sent to the outside counsel.

Members previously were sent two invoices. The new practice of providing one invoice will streamline operations at the NASD and save staff resources, yet still give members 60 calendar days in which to remit the fees before they are deducted from the firm's CRD account.

Questions/Further Information

Questions regarding this *Notice* may be directed to Dorothy Popp, Director of Operations, Office of Dispute Resolution, NASD Regulation, Inc., (NASD RegulationSM) at (212) 858-3950, or Louise Corso, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-6939.

Background

Once an arbitration claim has been filed, members must pay certain fees. These fees include, but are not limited to, member surcharges, process fees, and forum fees (collectively, "arbitration fees").¹ Arbitration fees are due at various stages of the arbitration process. For example, member surcharges are due at the time a claim is served, while hearing process fees are due when parties are notified of

the date and location of the first hearing session. Other arbitration fees are allocated by the arbitrators in the award and are due upon service of the award. The Office of Dispute Resolution bills member surcharges and processing fees during the course of the proceeding. It sends an invoice at the end of a proceeding to collect other fees, including forum fees and administrative fees.

The NASD has had an ongoing problem with unpaid fees resulting from arbitration proceedings. Since January 1998, the NASD has used funds deposited in a member's CRD account to pay delinquent arbitration fees, in an effort to reduce the amount of unpaid fees.² The NASD has provided members with two invoices and 60 calendar days to pay the fees before deducting funds from the firm's CRD account.

Deduction From Member's CRD Account

Effective for invoices issued on and after November 1, 1999, the NASD will send out only one invoice informing members that the arbitration fees are due. If the NASD does not receive payment 60 calendar days after the date on the invoice, it will deduct funds for delinquent arbitration fees from the member's CRD account.

The NASD has covered delinquent arbitration obligations with members' on-deposit funds since January 1998. The NASD believes that sending firms one invoice gives members reasonable notice of their obligations to pay the fees.

The NASD will continue to send to the member's compliance officer written confirmation of each deduction of funds from the CRD account to cover unpaid arbitration

fees. The member is thereafter responsible for replenishing the funds on deposit to ensure that there are no delays in processing registration applications or any other CRD-related obligations.

Suspension/Cancellation Of Membership Or Registration

On occasion, a member's CRD account is depleted before all delinquent fees can be collected. If the NASD does not receive payment within 60 calendar days after the date on the invoice, and there are insufficient funds on deposit to cover the unpaid fees, and the member has not made other payment arrangements, the NASD will pursue the suspension or cancellation of the member's membership pursuant to Article VI, Section 3 of the NASD By-Laws. The NASD, after a 15-day notice in writing, may suspend or cancel the membership of any member that is delinquent in the payment of arbitration fees, unless the member acts pursuant to applicable law to file, for example, a timely motion to vacate or to modify the award which has not been denied.

Joint And Several Responsibility For Payment Of Fees

All parties against whom arbitration fees have been assessed jointly and severally receive an invoice for the entire obligation, with notice that there is joint and several liability. Each party is equally liable for the satisfaction of the entire obligation. Satisfaction of the outstanding fees releases all parties from the outstanding liability. However, if the balance remains unpaid 60 calendar days after the date on the invoice, the NASD will deduct funds from the CRD accounts of active member firms against which the arbitrators have assessed fees jointly and severally. When multiple active member firms are held jointly and severally liable for fees in a proceeding, the NASD will divide the remaining balance equally among the active members and deduct an equal amount from each member's respective CRD account.

Endnotes

¹ *Member surcharges* are assessed against member firms when they are named in an arbitration proceeding, or when an associated person employed by the firm at the time of the events which gave rise to the

claim is named in an arbitration proceeding. See Code of Arbitration Procedure, Rule 10333. *Process fees* are charged to members at several stages of an arbitration proceeding. Members are charged a prehearing process fee which covers activities in the case from the filing of the claim until the parties are given the names of arbitrators to select. If the matter does not settle before notification of the date of the first hearing session, the member must also pay a hearing process fee which covers activities relating to the evidentiary hearing, award, and case closing. See Rule 10333. See also *Notice to Members 98-1*. *Forum fees* are the fees assessed against parties by the arbitration panel based on the number of prehearing and hearing sessions that occurred in the arbitration proceeding. See Rules 10205 and 10332.

² See *Notice to Members 97-71* which established the practice of deducting delinquent arbitration fees from member CRD accounts. The practice was limited to balances originating after January 1, 1998. *Special Notice to Members 98-61* extended the practice to include fees originating prior to January 1, 1998 that were still unpaid.

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