

Notice to Members

OCTOBER 2003

SUGGESTED ROUTING

Legal & Compliance
Senior Management

KEY TOPICS

Arbitration

INFORMATIONAL

SEC Approves Arbitrator Background Verification Process

New Arbitrator Applicants Must Undergo Background
Verification and Pay Fee; **Effective October 1, 2003**

Executive Summary

On September 25, 2003, the Securities and Exchange Commission (SEC) approved a proposal to conduct background verification and charge an application fee for NASD neutral roster applicants.¹

Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959 or jean.feeney@nasd.com; or Barbara L. Brady, Associate Vice President and Director of Neutral Management, at (212) 858-4352 or barbara.brady@nasd.com.

Discussion

Background

NASD maintains a pool of approximately 7,000 available arbitrators. Arbitrator applicants submit biographical profile forms, together with two letters of reference. The biographical profile forms require applicants to provide detailed information on their business and employment histories, education, training, possible conflicts, experience, expertise, associations with industry members, and other matters. The application also requires a narrative background information statement in which applicants are asked to explain why they believe their experience and knowledge would benefit the process. Attorneys and accountants are further directed to provide specific details about their practices.

Arbitrator information is entered into NASD's database and is provided to parties in the form of a disclosure report during the arbitrator selection process. Arbitrators must update this biographical information on a regular basis. NASD sends frequent reminders to arbitrators about the importance of this obligation, especially after they are notified regarding possible service as an arbitrator. NASD requires arbitrators in each case to affirm that they have reviewed their disclosure report and that it is accurate, and to complete a disclosure checklist attached to the oath. NASD provides each arbitrator on a panel with the co-panelists' biographical profiles in order to facilitate peer reviews for accuracy.

In addition to gathering the above information, NASD currently checks records on the Central Registration Depository (CRD) for arbitrator applicants who have been registered with NASD, most of whom would be categorized as "non-public" arbitrators under NASD Rule 10308(a)(4). NASD has not verified the information provided by arbitrator applicants who do not have CRD records, most of whom would be classified as "public" arbitrators under NASD Rule 10308(a)(5).

New Background Verification Procedure

Effective October 1, 2003, NASD has expanded its verification of background information to cover all arbitrator applicants. This will provide additional protection to parties using the Dispute Resolution forum, raise the standards of the neutral roster, and enhance investor confidence in the integrity of the forum. NASD Dispute Resolution has engaged a vendor to provide the following verification services:

- ◆ Criminal check in the county of the applicant's residence;
- ◆ Federal criminal check;
- ◆ Employment verification; and
- ◆ Professional license verification.

The verification fee will be \$80 per application. For this amount, the vendor will perform county and federal criminal record checks; verify any professional licenses; and check the last employer or, if the applicant has been employed for fewer than ten years by the same employer, then the last two employers. To keep the fee reasonable, NASD will assume that verification of professional licenses provides an indirect check on the applicant's education, since licensing authorities generally verify an applicant's educational history. If the applicant does not have a professional license, however, then the vendor will substitute verification of the last degree awarded.

The background verification fee will be charged for new arbitrator applications that are received by NASD after the effective date of the new procedure, which is October 1, 2003. It will not apply to arbitrators currently on NASD's arbitrator roster who wish to update information they supplied previously. Applications received after the effective date will not be processed until NASD receives the proper fee.

Effective Date

The new process is effective for arbitrator applications received after October 1, 2003.

Endnote

1. Securities Exchange Act Release No. 48541
(September 25, 2003), 68 Federal Register 56661
(October 1, 2003) (File No. SR-NASD-2003-122).

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