

Notice to Members

FEBRUARY 2004

INFORMATIONAL

SUGGESTED ROUTING

Legal & Compliance
Senior Management

Uniform Submission Agreements

NASD Reminds Members and Associated Persons of
Their Duty to File Uniform Submission Agreements

KEY TOPICS

Arbitration
Sanctions
Uniform Submission Agreements

Executive Summary

NASD's Code of Arbitration Procedure (Code) requires respondents in NASD arbitrations to serve an answer and an executed Uniform Submission Agreement (USA) at the time the answer to the Statement of Claim is due. NASD has learned that some members and associated persons named as respondents in arbitration proceedings are neglecting or refusing to submit a signed USA in a timely manner. Failing to sign and submit the USA may cause confusion, lead to ancillary litigation, and undermine the enforceability of arbitration awards. The purpose of this *Notice* is to remind members and associated persons named as respondents that, absent a specific jurisdictional challenge, submission of a USA is mandatory, and that failure to comply may result in sanctions or disciplinary action.

Questions/Further Information

Questions regarding this *Notice* may be directed to Laura Gansler, Counsel, NASD Dispute Resolution, at (202) 728-8275, or via e-mail at laura.gansler@nasd.com.

Discussion

NASD Rule 10314 requires all parties to NASD arbitrations to submit an executed USA agreeing to arbitrate under NASD rules. A claimant's USA is due at the time the Statement of Claim is filed; NASD will not serve the claim until it is received. Respondents must serve an executed USA at the time the answer to the Statement of Claim is due or served, whichever is earlier.

NASD staff has learned that some members and associated persons named as respondents are neglecting or refusing to sign the USA. While these members and associated persons may believe that signing the USA is unnecessary since they are required to submit to arbitration under the Code in any event, failure to sign the USA may cause needless confusion or even ancillary litigation by the opposing party, and may place the eventual award in jeopardy. For example, Section 13 of the Federal Arbitration Act (FAA) requires that a motion to confirm an arbitration award must include the parties' agreement to arbitrate. Although a claimant may be able to demonstrate that a member that failed to execute a USA was nonetheless required to arbitrate pursuant to NASD rules, failure to execute the USA can unnecessarily hinder the ability of a claimant to seek confirmation of an award pursuant to Section 13 of the FAA.

The purpose of this *Notice* is to remind members and associated persons who are named as respondents in NASD arbitrations that filing a USA is mandatory. Absent a specific and colorable objection that the respondent is not subject to arbitration under Rules 10101, 10201, or 10301 of the Code, a respondent's failure to file a USA in a timely manner can lead to sanctions by the arbitration panel, and, in certain circumstances, may be considered a violation of just and equitable principle of trade and NASD Rule 2110. In addition to publishing this *Notice*, NASD Dispute Resolution will initiate a practice of notifying all parties of the status of each party's USA before the Initial Prehearing Conference (IPHC), so that every party will know whether every other party has properly executed the USA before the IPHC begins. This will allow the parties to ask the arbitrators to require USAs from any party that has not yet executed one. Finally, NASD Dispute Resolution will amend the script used by arbitrators at the IPHC to address this issue. Specifically, the script will include a statement by the arbitrators that any party that has not yet filed a USA must do so, or object in writing to NASD jurisdiction on the bases described above, within 30 days, and that failure to do so may result in sanctions, as provided by the Code, as well as possible disciplinary action.

NASD hopes that these measures will serve as an effective reminder to members and associated persons named as respondents in NASD arbitrations that they must file USAs in a timely manner, as required by the Code, and thereby alleviate the need for future rule changes or other additional steps to address the problem.

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