

Notice to Members

SEPTEMBER 2002

SUGGESTED ROUTING

Legal & Compliance

Answers in Arbitration

SEC Approves Amendment to Rule 10314 Regarding Specificity of Answers; **Effective October 14, 2002**

KEY TOPICS

Answers

Arbitration

Dispute Resolution

Executive Summary

The Securities and Exchange Commission (SEC or Commission) has approved amendments to Rule 10314 of the NASD Code of Arbitration Procedure (Code) governing Initiation of Proceedings.¹ The amendments will conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim submitted.

The text of the amendments as provided in Attachment A will apply to all claims filed on or after October 14, 2002.

Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, at (202) 728-6959, or e-mail jean.feeney@nasd.com.

Discussion

NASD is amending the Code to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim that was submitted by the claimant, rather than specifying all such facts and defenses that may be relied upon at the hearing.

As background, NASD recently streamlined its procedures for review of arbitration claims. NASD does not consider a Statement of Claim to be deficient if it meets the minimum requirements of a properly signed Uniform Submission Agreement that names the respondents as shown on the Statement of Claim, proper fees, and sufficient copies of the Statement of Claim. This has accelerated the claims review process, so that claims can be served promptly after filing. Accordingly, the Statement of Claim may not contain details on the evidence to be presented at the hearing.

The rules relating to Answers continued to provide, however, that the Answer had to specify all available defenses and relevant facts that would be relied upon at the hearing, and that a respondent that failed to specify all available defenses and relevant facts in its Answer could be barred from presenting such facts or defenses at the hearing.²

NASD determined that the above provisions could place the respondent at an unfair disadvantage because the initial claim may be quite brief, but may be expanded substantially by the time of the hearing. Based on Rule 10314(b), the arbitrators might prevent the respondent from introducing additional facts or defenses to the expanded claim. Therefore, Rule 10314(b)(1) has been amended to provide that the Answer should only be required to specify all relevant facts and available defenses to the Statement of Claim submitted, which makes the requirement consistent with the streamlined claims procedure; and Rule 10314(b)(2)(A) has been amended to apply only to general denials to pleadings that state specific facts and contentions.

Effective Date

The amendment described in this *Notice* will apply to all claims filed on or after October 14, 2002.

Endnotes

- 1 Exchange Act Release No. 46256 (July 25, 2002) (File No. SR-NASD-2002-62, 67 Federal Register 50499 (August 2, 2002)).
- 2 The term “defenses” in Rule 10314 is understood to include not only defenses to the specific allegations in the Statement of Claim, but also any affirmative defenses that the respondent may wish to set forth.

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ATTACHMENT A

New language is underlined; deletions in brackets.

Code of Arbitration Procedure

10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) No change.

(b) Answer – Defenses, Counterclaims, and/or Cross-Claims

(1) Within 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all [available defenses and] relevant facts and available defenses [thereto that will be relied upon at the hearing] to the Statement of Claim submitted and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based on any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial [as an Answer] to a pleading that states specific facts and contentions may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

[Remainder of rule unchanged.]