

INFORMATIONAL

Sunset Of Large And Complex Cases Rule

SEC Approves Early Expiration Of Large And Complex Cases Rule;
Effective Date:
December 31, 2000

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.

- Legal & Compliance

KEY TOPICS

- Arbitration
- Large and Complex Cases

Executive Summary

On November 17, 2000, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) rules that revise Rule 10334 to accelerate the expiration of the large and complex cases rule from August 1, 2002 to December 31, 2000.¹ Included with this *Notice* is Attachment A, the text of the amendments.

Questions/Further Information

Questions regarding this *Notice* may be directed to George H. Friedman, Senior Vice President and Director, NASD Dispute Resolution, Inc., at (212) 858-4488; or Laura Leedy Gansler, Counsel, NASD Dispute Resolution, Inc., at (202) 728-8275.

Discussion

Rule 10334 of the NASD Code of Arbitration Procedure (Code) establishes certain optional procedures for handling and managing large and complex (LAC) cases, defined as those involving claims of \$1 million or more. Specifically, the rule provides for an administrative conference at the outset of the case, a preliminary hearing before an arbitrator to resolve discovery and other disputes, and the opportunity for parties to select arbitrators through preferential rankings. Use of the rule results in higher filing fees and deposits for claimants than proceeding under the general provisions of the Code.

The rule was adopted for a one-year pilot period in 1995. At that time, the procedures established by the rule were not available in other arbitration cases. In 1997, the NASD amended the rule to make voluntary certain of its

provisions, which had been mandatory. At the same time, the NASD extended the rule for five years to provide enough time to determine whether parties would use the rule more frequently as amended. In its rule filing, the NASD noted that few parties were electing to proceed under the rule. The few parties who did elect to proceed under the rule apparently did so to take advantage of the availability of a list selection procedure for the appointment of arbitrators. The NASD found that parties were deterred from using the rule by the higher fees it required.

Recent changes to the Code and to NASD Dispute Resolution, Inc. practices have extended the most important of the procedures established by Rule 10334 to all cases, including the selection of arbitrators through preferential rankings. The benefits of the administrative conference and the preliminary hearing are available through the Initial Prehearing Conference that is now held in almost all cases. Moreover, the discovery process has been significantly enhanced with the recent adoption of the Discovery Guide.

As a result of these changes, use of the rule has decreased significantly. Through July 31, 2000, parties elected to proceed to the administrative conference phase of the LAC process in only 4 out of 366 eligible cases; in 1999, parties did so in only 6 out of 679 eligible cases. More significantly, in none of these cases did the parties elect to proceed under Rule 10334 past the administrative conference stage to a hearing on the merits. While some of these cases may have settled, it is also probable that once the parties understood that the benefits of the rule are available under the Code without the higher fees required under the rule, they elected not to continue

to proceed under the rule. No case has gone past the administrative conference stage of Rule 10334 procedures since 1997.

Even though it is rarely used, the rule requires staff training and resource allocation. It can also be a source of confusion for parties, who may not realize that they can now obtain the principal benefits of the LAC case program without paying the higher fees required under the rule. Therefore, NASD Dispute Resolution determined to allow the rule to expire early. The

expiration was accelerated from its current date of August 1, 2002, to December 31, 2000. The rule change will apply to all cases in which parties had not requested an administrative conference or otherwise agreed to proceed under Rule 10334 by December 31, 2000.

The amendments also delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies, and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate

solely to Rule 10334. Because numerous publications refer to the Schedule of Fees as paragraph (k) of Rules 10205 and 10332, deleted paragraphs in those rules have been marked as "reserved" for the present time.

Endnote

1 Exchange Act Release No. 43535 (Nov. 8, 2000) (File No. SR-NASD-00-65), 65 Federal Register 69592 (Nov. 17, 2000).

ATTACHMENT A

Text Of Amendments

*New language is underlined;
deletions are in brackets.*

10000. Code of Arbitration Procedure

10205. Schedule of Fees for Industry and Clearing Controversies

(a) - (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, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.] Reserved.

(j) Reserved.

(k) Schedule of Fees

(Remainder unchanged.)

10332. Schedule of Fees for Customer Disputes

(a) - (g) No change.

(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, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.] Reserved.

(i) Reserved.

(j) Reserved.

(k) Schedule of Fees

(Remainder unchanged.)

10334. Procedures for Large and Complex Cases

(a) - (g) No change.

(h) Temporary Effectiveness

This Rule shall remain in effect until [August 1, 2002] December 31, 2000, unless modified or extended prior thereto by the Board of Governors.

© 2001, National Association of Securities Dealers, Inc. (NASD). All rights reserved. Notices to Members attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.