

**INFORMATIONAL**

## Arbitration Awards

NASD Dispute Resolution Will Require Firms To Certify In Writing That They Have Complied With Arbitration Awards Within 30 Days Of Receipt; **Effective Date: September 18, 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
- Operations
- Registered Representatives
- Senior Management

**KEY TOPICS**

- Arbitration Awards
- Motions To Vacate
- Nonpayment Of Awards
- Suspension Proceedings

### Executive Summary

To respond to concerns raised by the General Accounting Office, NASD Dispute Resolution, Inc. (formerly the Office of Dispute Resolution of NASD Regulation, Inc.) is implementing a system of monitoring and tracking compliance with arbitration awards by members and associated persons.

Starting on September 18, 2000, when claimants prevail in an arbitration proceeding, NASD Dispute Resolution will request to be notified by the claimants if a member or associated person has not paid the arbitration award within 30 calendar days of receipt of the award as required by Rule 10330(h). NASD Dispute Resolution will also require member firms to certify in writing that they have complied with awards against them or their associated persons.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Special Advisor to the President, NASD Dispute Resolution, at (202) 728-6959 or via e-mail at: [jean.feeney@nasd.com](mailto:jean.feeney@nasd.com).

### Discussion

#### Background

On June 15, 2000, the United States General Accounting Office (GAO) issued a report entitled, *Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards* (GAO Report).<sup>1</sup> The GAO Report was the culmination of an audit that began in the fall of 1998 and continued until the spring of 2000. GAO auditors surveyed 845 investors who received monetary awards in 1998 to determine how many awards had been paid or otherwise complied with. While the GAO Report found

that the NASD had initiated new arbitration processes to respond to recommendations contained in a 1992 GAO Report,<sup>2</sup> the GAO expressed concern that about 500 NASD awards to investors in 1998 either were unpaid or only partially paid.

The GAO observed that the NASD did follow up on all complaint letters it received concerning unpaid awards, and that most of the unpaid awards resulted from broker/dealers that were no longer in business. The GAO noted that, "Taking action to monitor the status of award payments and identify nonpaying brokers as soon as payment is due not only could benefit investors but also could help preserve their confidence in the arbitration process and thus benefit the entire securities industry."<sup>3</sup>

The GAO Report made several recommendations to deal with the problem of unpaid awards, including a recommendation that parties notify the NASD about the payment status of any monetary award when the 30-day payment period has passed. In response, NASD Dispute Resolution agreed to take appropriate measures to encourage prompt payment of arbitration awards. As part of those measures, NASD Dispute Resolution will now specifically request prevailing claimants to notify the forum in writing when their awards have not been paid, and will require member firms to certify in writing that they have complied with awards against them or their associated persons.<sup>4</sup>

Rule 10330(h) of the Code of Arbitration Procedure (Code) provides as follows:

All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate

has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award: (1) if not paid within thirty (30) days of receipt, (2) if the award is the subject of a motion to vacate which is denied, or (3) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

The NASD By-Laws, Article VI, provide as follows:

### Sec. 3. Suspension or Cancellation of Membership or Registration

The NASD after 15 days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments, or other charges or for failure to furnish any information or reports requested pursuant to Section 2, or for failure to comply with an award of arbitrators properly rendered pursuant to the Rules of the Association, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Association.

Therefore, if arbitration awards are not complied with in a timely manner, NASD Dispute Resolution currently institutes suspension proceedings against the member firm or associated person as provided in the NASD By-Laws and

the Rule 9510 Series, unless the member or associated person establishes one of the following bases for nonpayment, which are listed in the initial suspension warning letter:

1. The member or associated person made full payment of the award;
2. The parties have agreed to installment payments of the amount awarded or have otherwise agreed to settle the action;
3. The award has been modified or vacated by a court;
4. A motion to vacate or modify the award is pending in a court;<sup>5</sup> or,
5. The member or associated person has a bankruptcy petition pending in U.S. Bankruptcy Court pursuant to Title 11 of the United States Code (the Federal Bankruptcy Code), or the award in the action has been discharged by a U.S. Bankruptcy Court.

### New Notification Procedure

**For Claimants:** Beginning on September 18, 2000, letters to parties enclosing their arbitration awards will include a notice informing prevailing claimants that member firms and associated persons are required to comply with the award within 30 days of receipt unless they have a valid basis for not doing so, and that members and associated persons who do not comply with this requirement are subject to non-summary suspension proceedings. The notice will ask claimants to notify NASD Dispute Resolution in writing if their award has not been paid by the end of the 30-day period.

**For Respondents:** Letters enclosing arbitration awards in which the claimant has prevailed will include a notice requiring members to notify NASD Dispute Resolution in writing within 30 days of receipt if they or their associated persons have paid or otherwise complied with the award. If the member or associated person has not complied with the award, the member must identify a valid basis for nonpayment from among those listed above. This will enable NASD Dispute Resolution to institute suspension proceedings promptly when appropriate, and will prevent unnecessary regulatory effort in cases in which the award is the subject of a pending motion to vacate or there is another valid basis for nonpayment.

### Endnotes

<sup>1</sup>The GAO Report may be found on the Internet at: [www.gao.gov/new.items/gg00115.pdf](http://www.gao.gov/new.items/gg00115.pdf) or ordered through the Government Printing Office under the number GAO/GGD-00-115.

<sup>2</sup>That report was entitled *Securities Arbitration: How Investors Fare* (GAO/GGD-92-74, May 11, 1992).

<sup>3</sup>GAO Report at 38.

<sup>4</sup>Associated persons who have changed employment since the arbitration claim was filed will be required to notify NASD Dispute Resolution directly regarding the payment status of any awards against them.

<sup>5</sup>An award must be paid immediately when a court denies a motion to vacate or modify the award, absent a court order staying compliance with the award.

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