Special NASD Notice to Members 98-61

NASD Members Face CRD Account Deduction Or Membership Cancellation For Non-payment Of Arbitration Fees

Suggested Routing

- ■ Senior Management
- ■ Advertising
- □ Continuing Education
- ■ Corporate Finance
- □ Executive Representatives
- ■ Government Securities
- ■ Institutional
- □ Insurance
- ■ Internal Audit
- ■ Legal & Compliance
- ■ Municipal
- ■ Mutual Fund
- ■ Operations
- ■ Options
- □ Registered Representatives
- ■ Registration
- ■ Research
- ■ Syndicate
- ■ Systems
- ■ Trading
- ■ Training
- □ Variable Contracts

Executive Summary

Effective upon publication of this *Notice*, the National Association of Securities Dealers, Inc. (NASD®) will extend the practice of deducting delinquent (*i.e.*, greater than 90 days outstanding) arbitration fees from funds maintained in a member's Central Registration Depository (CRD℠) account to include fees originating **prior to January 1, 1998**. *Notice to Members 97-71* established the practice of deducting delinquent arbitration fees from member CRD accounts. However, this practice was limited to balances originating after January 1, 1998.

As previously outlined in *Notice to Members 97-71*, members will receive a final written notice that outstanding arbitration fees are due and payable. This notice will be sent as part of the normal billing and collections process after the balance has been outstanding for 30 days. If payment is received prior to the established deadline (*i.e.*, **60 days after final notice**), the NASD will not deduct funds from the member's CRD account. Members are responsible for replenishing the funds on deposit in their respective CRD accounts to ensure that no delays are experienced in processing registration applications or any other CRD-related obligation.

If after the 60-day period specified in the final notice, there are insufficient funds on deposit to cover the unpaid fees, the NASD will pursue the suspension or cancellation of the member's membership pursuant to Article VI, Section 3 of the NASD By-Laws. NASD, after a **15-day notice** in writing, may suspend or cancel the membership of any member that is delinquent in the payment of arbitration fees in cases where a party has not filed a motion to vacate or to modify an award pursuant to applicable law, or where a court has denied such a motion.

Questions regarding this *Notice* may be directed to Linda Fienberg, Executive Vice President, Office of Dispute Resolution, NASD Regulation Inc. at (212) 858-4400; Todd Diganci, Vice President and Corporate Controller, Finance Department, NASD at (301) 590-6203; or Elliott R Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation℠, at (202) 728-8451.

Background

The Office of Dispute Resolution has, and continues to have, a substantial and growing problem with unpaid member and associated person fees, such as member surcharges and forum fees, resulting from arbitration proceedings. Member surcharges are assessed to member firms when they are named in an arbitration proceeding or when an associated person employed by the firm is named in an arbitration proceeding. Forum fees are the fees assessed to a party by the arbitrators based on the number of hearing sessions that occurred in an arbitration case.

Member surcharge fees are assessed and become due and payable when an arbitration claim is served on the member. Forum fees are assessed by the Arbitration Panel and become payable when a case is completed and the statement of account is issued. When there is an arbitration award, the award specifies how much of the total forum fees must be paid by each party to the case.

Under the current invoicing and dunning procedures, NASD believes that members are given sufficient notice of their obligations in order for them to pay the resulting charge prior to deduction of funds from their CRD account. NASD will continue to provide written confirmation of each reallocation to the member's compliance officer.

Deduction From Member's CRD Account

Many members maintain funds on deposit with the NASD in order to expedite processing of employee registrations, examinations, and fingerprint card processing. Increasingly, however, members are asking that on-deposit funds be reallocated for payment of other NASD and NASD Regulation obligations such as advertising fees, gross income assessment fees, and NASD MediaSource℠ materials (*e.g.*, fingerprint cards or other reference materials). For these reasons, the use of member on-deposit funds to cover other obligations owed to the NASD is appropriate.

Accordingly, for delinquent arbitration fees, the NASD will provide **a final written notice** that will give members **60 days from the date of the notice** to pay the outstanding obligations. If payment is not received by the end of that 60-day period, the NASD will deduct the fees from the member's CRD account.

Joint And Several Cases

All parties against whom arbitration fees have been assessed jointly and severally are equally liable for the satisfaction of the entire obligation. Satisfaction of the fee releases all parties from the outstanding liability without any apportionment. Through its normal billing and collections process, the NASD will continue to expend significant efforts to collect the fees from all parties. If despite those efforts, the balance remains unpaid 90 days after the case has been closed, NASD will deduct funds from the CRD accounts of active member firms against which arbitrators have assessed fees jointly and severally.

Suspension/Cancellation Of Membership Or Registration

Members whose CRD account balances are insufficient to cover an unpaid debt, and who do not make other payment arrangements, may have their membership suspended or cancelled pursuant to Article VI, Section 3 of the NASD By-Laws. Associated persons who do not pay arbitration fees also are subject to suspension or termination of their registration pursuant to Article VI, Section 3 of the NASD By-Laws.

The NASD, after a 15-day notice in writing, may suspend or cancel the membership of any member that is delinquent in the payment of arbitration fees in cases where a party has not filed a motion to vacate or to modify an award pursuant to applicable law, or where a court has denied such motion.

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