NASD Notice to Members 98-74

SEC Approves Rule Amendment Relating To Hearings On Suspensions And Cancellations For Failure To Comply With Arbitration Awards

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

On May 26, 1998, the Securities and Exchange Commission (SEC) approved an amendment to National Association of Securities Dealers, Inc. (NASD®) Rule 9514 authorizing hearing officers from the NASD Regulation, Inc. (NASD Regulation℠) Office of Hearing Officers to preside over non-summary proceedings involving cancellations and suspensions related to failure to comply with an NASD-imposed arbitration award or settlement agreement. The amendment became effective on May 26, 1998.

Questions regarding this *Notice* may be directed to Joseph Furey, Vice President, Office of Hearing Officers, NASD Regulation, at (202) 728-8008, or Mary Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252.

Background And Description Of Amendment

This amendment changes the composition of the hearing panels used for non-summary proceedings in which the NASD seeks to suspend or cancel the membership of a member firm or the registration of an associated person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Previously, a hearing panel composed of one current NASD Regulation director plus at least one other current or former NASD or NASD Regulation board member heard these non-summary suspension proceedings. Pursuant to the amendment, a single member of the Office of Hearing Officers, appointed by the Chief Hearing Officer, will preside over these non-summary proceedings.

The Office of Hearing Officers is an independent office within NASD Regulation whose purpose is to provide a group of independent and professional hearing officers (comprised of attorneys with appropriate experience and training) to preside over formal NASD disciplinary proceedings under the NASD Rule 9200 Series.

NASD Regulation determined that board members were not required for these non-summary proceedings because the issues involved are narrow and largely administrative. Designating a single hearing officer to preside over these non-summary proceedings also provides administrative efficiencies in conducting the hearings and rendering decisions. The amendment does not alter the ability of member firms and their associated persons to request a hearing concerning a failure to pay an arbitration award; it merely alters the composition of the hearing panel. The members of the Office of Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to the training and experience gained in oversight of the NASD's disciplinary proceedings.

Text Of Amendment

(Note: New text is underlined; deletions are bracketed.)

Rule 9514. Hearing and Decision

(a) and (c)-(f) No Change

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party [, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members]. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; [One] one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on [the] a Hearing Panel.