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July 3, 2002

Florence Harmon
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Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2002-15 – Default Procedures for Claims against Terminated Members and Associated Persons – Response to Comments

Dear Ms. Harmon:

NASD hereby submits a response to comments received by the Commission on the above-referenced rule filing. One comment letter was received, a letter dated May 21, 2002, to the Secretary, Securities and Exchange Commission, from Barbara Black and Jill I. Gross, who wrote that they are the co-directors of the Securities Arbitration Clinic at Pace University School of Law in New York. The letter supports the proposed rule change as beneficial to customers, and proposes two substantive changes.

Termination of Default Procedures

One change proposed by the comment letter relates to proposed paragraph (e)(7), which provides that default procedures are terminated if the respondent files an answer at any time before an award has been rendered. The comment letter suggests that, if a respondent wishes to terminate default procedures, the respondent be required to obtain the arbitrator's consent, unless the claimant agrees to the request.

NASD believes it is fair to allow the defaulting respondent to appear and automatically terminate default procedures. To deny the respondent the right to rejoin the regular proceedings due to a late answer could result in court challenges that might delay the

proceeding, to the claimant's detriment. Although an exception could be made for cases in which the respondent has obtained the consent of the claimant or arbitrator, this also lengthens the process, and it may be that arbitrators would grant such requests liberally for good cause, as courts do. For comparison, Rule 55(c) of the Federal Rules of Civil Procedure provides that, for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). Moreover, a respondent is unlikely to use the failure to answer and sudden appearance as a desirable tactic, because the respondent rejoins the case where the respondent finds it. That is, if a panel has already been selected, the respondent must accept that panel without input into its selection, subject only to a challenge for cause. If a prehearing conference or hearing session has been held, the late-appearing respondent must deal with what has gone on before unless the respondent successfully moves the panel for relief. Finally, Rule 10314(b)(2)(C) provides that a respondent who fails to file an answer within 45 calendar days from receipt of service of a claim, unless the time to answer has been extended, "may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing." NASD believes this is sufficient deterrent to the respondent's failing to answer and then suddenly appearing. And as noted in the rule filing, it is likely that a respondent meeting the criteria of the Rule is indeed defunct and will not reappear. On the other hand, if a respondent has a very good reason for not answering in a timely manner, such as an extended trip abroad or a serious illness, the panel can consider those circumstances in the context of requests for relief as described above.

Timing Of Claimant's Option to Commence Default Procedures

The proposed rule provides that default procedures may be invoked if a defunct respondent fails to file an answer in a timely manner. The second issue raised by the comment letter is that, after filing an answer, a respondent may cease to participate because of one of the reasons listed in proposed paragraph (e)(1). In such a case, the comment letter recommends that the claimant have the option to convert the proceeding to a default procedure.

In drafting the proposed rule change, NASD considered various points in time at which the claimant would be able to switch to default procedures. It was NASD's intention to draft a rule that would cover the majority of situations involving defunct respondents without making it unduly complicated. If it should happen that, after filing an answer, a respondent becomes defunct as defined in proposed paragraph (e)(1), the claimant will put on its case and the panel will render a verdict. If there are no other respondents, this matter can be concluded expeditiously, and it may not even be necessary to hold an in-person hearing. This will reduce further hearing session costs to the claimant.

In conclusion, NASD appreciates and has considered the comment letter's recommendations, and believes that no amendments are appropriate at this time. We believe it is in the best interests of investors to put the default procedures rule into effect as soon as possible. As always, NASD will monitor the operation of the rule and consider any further enhancements

that might be warranted. We intend to publish a Notice to Members and a Web site announcement of the new rule within 60 days of Commission approval, and to establish an effective date of at least 30 days thereafter.

If you have any questions, my telephone number is (202) 728-6959, and my e-mail address is jean.feeney@nasd.com. The fax number is (202) 728-8833.

Very truly yours,

Jean I. Feeney

cc: John Roeser
Cindy Nguyen