

NASD NOTICE TO MEMBERS 98-1

Arbitration Process Fees

Suggested Routing

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Executive Summary

NASD Regulation, Inc., is announcing that, effective January 2, 1998, a new arbitration process fee will be assessed on members that are parties to arbitration proceedings, and on members that employ associated persons who are parties to arbitration proceedings. The fee will be imposed in two parts: a prehearing process fee and a hearing process fee.

Questions regarding this *Notice* may be directed to Linda Fienberg, Executive Vice President, Office of Dispute Resolution, NASD RegulationSM, at (202) 728-8407; Deborah Masucci, Vice President and Director, Office of Dispute Resolution, NASD Regulation, at (212) 858-4400; or Elliott R. Curzon, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

Background And Discussion

On Thursday, December 11, 1998, NASD Regulation submitted a rule filing to the Securities and Exchange Commission (SEC) amending Rule 10333 of the National Association of Securities Dealers, Inc. (NASD[®]) Code of Arbitration Procedure to add a process fee to be charged to members at several stages of arbitration proceedings. The text of the new process fee rule is attached to this *Notice* as Exhibit A. The amendment is effective upon filing with the SEC and NASD Regulation plans to implement the new fee on January 2, 1998. The new fee is the last stage of a three-stage effort to make the NASD's dispute resolution program self-funding by imposing fees on participants in arbitration proceedings.¹ NASD Regulation also anticipates that its proposed increase in filing fees and hearing session deposits currently pending approval at the SEC will be approved and implemented on the same date or shortly thereafter.

The previously approved surcharge and the pending filing and hearing session fee increases will add approximately \$12 million to the revenue stream of the Office of Dispute Resolution (Office). In addition, they will shift much of the direct cost of operating the dispute resolution forum to the users of the forum. The final 1998 Budget for the Office, however, which includes transfer pricing of services provided by other NASD departments to the Office, projects total expenses of approximately \$35.2 million versus projected revenue of approximately \$29.1 million, leaving a revenue shortfall of approximately \$6.1 million. The new process fees are designed to recover all of the Office's costs that are not recovered through filing fees, hearing session deposits, forum fees,² and member surcharges, and to make the Office's activities self-funding in a way that generally reflects the extent of resources used in a given case.

The process fees will be assessed in two parts: (1) the Prehearing Process Fee for the activities in the case, from the filing of the claim up to and including the Prehearing Conference; and (2) the Hearing Process Fee for the activities relating to the evidentiary hearing, award and case closing.³ If the member concludes its involvement in a case through dismissal or settlement, the process fees accrued to that point will be assessed.⁴ Similarly, if an associated person of a member is named in a proceeding, but the member is not named, the member employing the associated person at the time of the events that gave rise to the dispute will be assessed the process fees when the associated person's involvement in the case is concluded.

The Prehearing Process Fee will accrue in three cumulative stages. First, when a claim is filed, a \$50 fee

will accrue against each member named in the claim.⁵ Next, when the first answer to the claim is received or due, an additional \$150 fee will accrue. Finally, when the arbitrators are selected, a fee of \$400 will accrue against each member in the case, for a maximum assessment against each member of \$600. The Prehearing Process Fee will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified of the date and location of the first hearing. These fees will not be dependent on the amount of the claim.

The Hearing Process Fee will accrue and become due and payable when the parties are notified of the date and location of the first hearing session. The Hearing Process Fee will be a graduated fee ranging from \$1,000 to \$5,000, based on the amount in dispute.

If an associated person is named, the member firm that employed the associated person at the time the claim arose will be assessed fees; however, a member will only be assessed once for each case even if both the member and an associated person (or associated persons) of the member are named as respondents.⁶

NASD Regulation believes that the structure of the process fee will result in the Office's costs being recovered even if there are significant variations

in the number of cases that proceed all the way through a hearing. Moreover, NASD Regulation believes that the new process fee may encourage settlements because significantly greater fees will be incurred by members once the matter proceeds to hearing.

Endnotes

¹ The first two stages involved increasing the surcharge on members named in arbitration proceedings and increasing filing fees and hearing session deposits. The increase in the member surcharge was submitted to the SEC for approval in rule filing SR-NASD-97-40 and was approved by the SEC. It was implemented on July 1, 1997. The proposed increases in filing fees and hearing session deposits were originally submitted to the SEC for approval in rule filing SR-NASD-97-39, resubmitted in rule filing SR-NASD-97-79, and are currently pending SEC approval.

² Forum fees are the charges for hearing sessions assessed at the end of a proceeding. Forum fees are calculated by multiplying the number of hearing sessions by the applicable hearing session deposit. The panel of arbitrators determines the fee allocation among the parties.

³ The process fee will not apply to an injunctive relief action filed under Rule 10335 of the Code until after the immediate injunctive relief stage of the proceeding. When the parties to such an action elect to proceed to a hearing on the merits before a panel of three arbitrators, the process fee will apply.

⁴ As with other fees, any overdue, unpaid process fees will be deducted from member funds maintained in member Central Registration Depository Accounts. See *Notice to Members 97-71* (October 1997).

⁵ As discussed above, if an associated person of a member is named, but the member employing the associated person is not named, the process fee will accrue against the member employing the associated person at the time of the events which gave rise to the dispute. References in this rule filing to fees assessed against members named in the proceeding will also refer to the circumstance where the member is not named in the proceeding, but is assessed the fee because a present or, where applicable, former associated person of the member is named in the proceeding.

⁶ As with the member surcharge, the new process fee will be assessed only against members. It will not be assessed against associated persons. In addition, because the process fee will be assessed against a member if an associated person of the member is named in a proceeding, members would be required to pay the process fee, for example: (1) where a member brings an arbitration case against an associated person to recover on a promissory note; (2) where an associated person brings an arbitration case against a member for defamation or wrongful discharge; or (3) where a customer brings an arbitration case against an associated person but does not name the member that employed the associated person at the time of the events that are the subject of the claim.

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New Arbitration Process Fee*(Note: New language is underlined; deletions are bracketed.)***10333. Member Surcharge and Process Fees**

(a) Each member [who is named as] that is a party to an arbitration proceeding, whether in a Claim, Counter-claim, Cross-claim or Third-Party Claim, shall be assessed a non-refundable surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be [subject to reimbursement] chargeable to any other party under Rules 10332(c) and 10205(c) of the Code.

Amount in Dispute	Surcharge
\$.01 - \$2,500	\$150
\$2,500.01 - \$5,000	\$200
\$5,000.01 - \$10,000	\$300
\$10,000.01 - \$25,000	\$400
\$25,000.01 - \$30,000	\$600
\$30,000.01 - \$50,000	\$800
\$50,000.01 - \$100,000	\$1,000
\$100,000.01 - \$500,000	\$1,500
\$500,000.01 - \$1,000,000	\$2,000
\$1,000,000.01 - \$5,000,000	\$2,500
\$5,000,000.01 - \$10,000,000	\$3,000
Over \$10,000,000	\$3,600

(b) For purposes of this Rule, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Rule 10314 of the Code.

(c) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable surcharge shall be \$1,200 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.

(d) Each member that is a party to an arbitration proceeding will pay a non-refundable process fee as set forth in the schedule below for each stage of a proceeding. The process fee shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees. The prehearing process fee will accrue according to the schedule set forth below, but will be due and payable when the prehearing conference is held, or, if no prehearing conference is held, when the parties are notified

of the date and location of the first hearing session. The hearing fee will accrue and be due and payable when the parties are notified of the date and location of the first hearing session. All accrued but unpaid fees will be due and payable at the conclusion of the member's or associated person's involvement in the proceeding. No member will pay more than one prehearing and hearing process fee for any case. The process fees will stop accruing when either the member enters into a settlement of the dispute or the member is dismissed from the proceeding or, if the member is paying a process fee as a result of an associated person being named as a party, when the associated person enters into a settlement or is dismissed from the proceeding, whichever is later.

Prehearing Process Fee Schedule
(proceedings where more than \$25,000 is in dispute)

<u>Service of Claim (accrues when the claim has been submitted and is ready to be served on the respondents)</u>	<u>\$50</u>
<u>Case Preparation (accrues when the first answer to the claim is received or due and discovery and motions proceedings commence)</u>	<u>\$150</u>
<u>Prehearing Activities (accrues when the parties are first notified of the names of any of the arbitrators selected to hear the matter or are given the names of arbitrators to select)</u>	<u>\$400</u>
<u>Total</u>	<u>\$600</u>

Hearing Process Fee Schedule
(accrues and becomes due and payable when the parties are notified of the date and location of the first hearing session)

<u>Damages Requested</u>	<u>Hearing Process Fee</u>
<u>\$1 - \$30,000</u>	<u>\$0</u>
<u>\$30,000.01 - \$50,000</u>	<u>\$1,000</u>
<u>\$50,000.01 - \$100,000</u>	<u>\$1,500</u>
<u>\$100,000.01 - \$500,000</u>	<u>\$2,500</u>
<u>\$500,000.01 - \$1,000,000</u>	<u>\$3,500</u>
<u>\$1,000,000.01 - \$5,000,000</u>	<u>\$4,500</u>
<u>More than \$5,000,000</u>	<u>\$5,000</u>
<u>Unspecified</u>	<u>\$2,000</u>