

## CONSIDERATIONS FOR CONFIRMING YOUR SECURITIES ARBITRATION AWARD

### 1. Time For Confirming or Challenging Arbitration Awards

NASD and NYSE arbitration awards are final and non-appealable. They can be challenged in Court only on very limited grounds, such as fraud, arbitrator misconduct, or “manifest disregard of the law.” Even then, under both Federal law and the law of most states, motions to vacate or modify an arbitration award must be brought within 90 or 100 days of the issuance of the award. See 9 U.S.C. § 12 [imposing a “three month” time limit; see Cal. Code Civ. P. § 1288 [imposing a 100 day limit.] By contrast, motions to “confirm” the arbitration award, and thus convert them into Federal or State Court judgments, are not subject to such short time limitations. Under Federal Law a party has one year to petition to confirm an arbitration award. 9 U.S.C. § 9. Most States have longer periods, such as California, which allows up to four years to move to confirm an award. Cal. Code Civ. P. 1288.

### 2. Time for Payment of Awards

NASD and NYSE rules require that monetary awards be paid “within 30 days”. NASD Code of Arbitration Rule 10330(h); NYSE Arbitration Rule 627. Further, both the NASD and NYSE provide that brokerage firms or brokers who fail to timely pay an arbitration award may be subject to discipline which may include suspension. NASD Code of Arbitration Rule 10100; NYSE Arbitration Rule 637.<sup>1</sup> Because working brokerage firms and brokers do not want to risk

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<sup>1</sup> By their express terms these rules of the NASD and NYSE apply not only to arbitrations conducted in the NASD and NYSE arbitration fora, but also to securities arbitrations conducted under the auspices of any SRO (“Self Regulating Organization”), including but not

being suspended or otherwise disciplined, they will usually pay the arbitration award on a timely basis, i.e. within 30 days, or file a petition to vacate or modify the award, which automatically postpones the payment obligation until the petition is decided.

3. Reasons to Confirm Awards

As a practical matter, therefore, unless a customer has obtained an arbitration award against a broker or brokerage firm that doesn't care about possible discipline or suspension, e.g. because they have already decided to go out of business or go into a different line of work, there is little reason to move to confirm the arbitration award. If the award is against a brokerage firm that *is* in precarious financial condition, however, or against a broker that has left the business, it is prudent to move to confirm the award, and thus convert it into a Federal or State Court judgment. Both Federal and State law provide various legal procedures, such as debtor exams, attachments and liens, that can be employed to collect from recalcitrant judgment debtors.

In arbitrations where a broker or brokerage firm is seeking expungement of a matter from their CRD, moreover, NASD rule 2130 expressly requires that an award recommending expungement be confirmed by a Court of competent jurisdiction.

4. Strategies for Timing of Petition to Confirm

Confirmation of arbitration awards is typically a rubber-stamp procedure that is unopposed by the losing party to the underlying arbitration. Where the losing party does challenge the confirmation, moreover, Federal and State law favoring the finality of arbitration awards is so strong that only a very small percentage of challenged awards are vacated or modified. That being said, vacation or modification is not unheard of, and in most jurisdictions

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limited to the other stock exchanges and the AAA (“American Arbitration Association”).)

the trend is toward greater scrutiny of, and less deference to, arbitration awards. The prevailing party will always prefer, therefore his petition to confirm not be met with a cross-petition to vacate. One way to advance this preference is to defer filing a petition to confirm for three months, i.e. until *after* the time for challenging the award has elapsed. Petitions to confirm sometimes spur the losing party to action, and trigger a cross-petition to vacate or modify. But petitions to vacate must be filed within three months, whereas petitions to confirm can be filed a year or longer after the award is issued. By waiting until the three month time for bringing a petition to vacate has elapsed, a petition to confirm can be filed without fear of triggering a cross-petition to vacate.

There are, however, a couple downside risks in deferring filing a petition to confirm for three months. First, it is possible that the losing party *will* file a petition to vacate before the deadline has passed. Since there is usually more than one Court that has jurisdiction to entertain petitions to vacate or confirm, this means the losing party has selected the forum. (Most securities arbitration awards can be confirmed or vacated in State or District Court, and often in more than one different District Court.) Also, by filing first, the losing party has obtained the procedural and psychological advantage of being the “petitioner”, making the prevailing party a “respondent” seeking confirmation through a cross-petition. Second, the delay of three months itself can be harmful, especially if assets which might have been available for collection of the judgment are lost or hidden in that time.

## 5. Conclusion

In the context of securities arbitration, confirmation of awards is usually advisable only where collectibility is questionable, or where confirmation is required for expungement. If a

party desiring confirmation is concerned about the vulnerability of the award, he should consider deferring the time for filing a petition to confirm until after the time for filing a petition to vacate has elapsed.

(Nothing follows)