

NASD CODE OF MEDIATION PROCEDURE

14100. Definitions

(a) Board

The term "Board" means the Board of Directors of NASD Dispute Resolution, Inc.

(b) Code

The term "Code" means the NASD Code of Mediation Procedure.

(c) Director

The term "Director of Mediation" refers to the Director of Mediation at NASD Dispute Resolution. Unless the Code or any other NASD rule provides otherwise, the term includes NASD staff to whom the Director has delegated authority.

(d) Matter

The term "matter" means a dispute, claim, or controversy.

(e) NAMC

The term "NAMC" means the National Arbitration and Mediation Committee of the Board of Directors of NASD Dispute Resolution, Inc.

(f) NASD

Unless the Code specifies otherwise, the term "NASD" includes NASD, Inc., and NASD Dispute Resolution, Inc.

(g) NASD Customer Code

The term "NASD Customer Code" means the NASD Code of Arbitration Procedure for Customer Disputes

(h) NASD Industry Code

The term "NASD Industry Code" means the NASD Code of Arbitration Procedure for Industry Disputes

(i) Submission Agreement

The term "Submission Agreement" means the NASD Mediation Submission Agreement. The NASD Mediation Submission Agreement is a document that parties must sign at the outset of a mediation in which they agree to submit to mediation under the Code.

14101. Applicability of Code

The Code applies to any matter submitted to mediation at NASD.

14102. National Arbitration and Mediation Committee

(a) The Board shall appoint a National Arbitration and Mediation Committee ("NAMC").

(1) The NAMC shall consist of no fewer than ten and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the Chairperson of the NAMC.

(b) The NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. All matters recommended by the NAMC to the Board must have been approved by a majority of the NAMC members present and voting. The NAMC has such other power and authority as is necessary to carry out the purposes of this Code.

(c) The NAMC may meet as frequently as necessary, but must meet at least once a year.

14103. Director of Mediation

(a) The Board shall appoint a Director of Mediation to administer mediations under the Code. The Director will consult with the NAMC on the administration of mediations, as necessary.

(b) The Director may delegate his or her duties when appropriate, unless the Code provides otherwise.

14104. Mediation Under the Code

(a) Mediation under the Code is voluntary, and requires the written agreement of all parties. No party may be compelled to participate in a mediation or to settle a matter by NASD, or any mediator appointed to mediate a matter pursuant to the Code.

(b) If all parties agree, any matter that is eligible for arbitration under the NASD Customer Code or NASD Industry Code, or any part of any such matter, or any dispute

related to such matter, including procedural issues, may be submitted for mediation under the Code.

(c). A matter is submitted to mediation when the Director receives an executed Submission Agreement from each party

(d) The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.

14105. Effect of Mediation on Arbitration Proceedings

(a) Unless the parties agree otherwise, the submission of a matter for mediation will not stay or otherwise delay the arbitration of a matter pending at NASD. If all parties agree to stay an arbitration in order to mediate the matter, the arbitration will be stayed, notwithstanding any provision to the contrary in this Code or any other NASD rule.

(b) If mediation is conducted through NASD, no postponement fees will be charged for staying the arbitration in order to mediate.

14106. Mediator Selection

(a) A mediator may be selected:

- By the parties from a list supplied by the Director;
- By the parties from a list or other source of their own choosing; or
- By the Director if the parties do not select a mediator after submitting a matter to mediation.

(b) For any mediator assigned or selected from a list provided by NASD, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator.

(c) Any mediator selected or assigned to mediate a matter shall comply with the provisions of NASD Customer Code Rule 12408 or NASD Industry Code Rule 13408, unless, with respect to a mediator selected from a source other than a list provided by NASD, the parties elect to waive such disclosure.

(d) No mediator may serve as an arbitrator of any matter pending in NASD arbitration in which he served as a mediator; nor may the mediator represent any party or participant to the mediation in any subsequent NASD arbitration relating to the subject matter of the mediation.

14107. Limitation on Liability

NASD, its employees, and any mediator named to mediate a matter under the Code shall not be liable for any act or omission in connection with a mediation administered under the Code.

14108. Mediation Ground Rules

(a) The following Ground Rules govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.

(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director.

(c) The mediator shall act as a neutral, impartial, facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter.

(d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter.

(e) The mediator may meet with and communicate separately with each party or the party's representative. The mediator shall notify all other parties of any such separate meetings or other communications.

(f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process.

(g) Mediation is intended to be private and confidential.

(1) The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

(2) The parties and the mediator agree that, unless all parties and the mediator agree otherwise in writing, the mediator will be disqualified as a witness, consultant, or expert in any pending or future investigation, action, or proceeding related to the subject matter of the mediation (including any investigation, action or proceeding that involves persons not a party to the mediation). The mediator and any documents or information in the mediator's

possession will not be subpoenaed in any such investigation, action, or proceeding, and the mediator and parties will oppose any effort to have the mediator or documents subpoenaed.

(3) Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to NASD or any other regulatory authority, documentary or other information that NASD or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

(4) The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

14109. Mediation Fees

(a) Filing Fees: Cases Filed Directly in Mediation

Each party to a matter submitted directly to a mediation administered under the Code must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$.01-\$25,000	\$ 50	\$150
\$25,000.01-\$100,000	\$150	\$300
Over \$100,000	\$300	\$500

(b) Filing Fees: Cases Initially Filed in Arbitration

When a matter is initially filed in arbitration and subsequently submitted to mediation under the Code, each party must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$.01-\$25,000	\$ 0	\$ 0
\$25,000.01-\$100,000	\$100	\$150
Over \$100,000	\$250	\$500

(c) Mediator Fees and Expenses

The parties to a mediation administered under the Code must pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with NASD its proportional share of the anticipated mediator charges and expenses, as determined by the Director, prior to the first mediation session.