

INFORMATIONAL

Mediation Fees

SEC Approves Rule Changes To Amend Mediation Fee Structure; Effective Date: November 1, 2000

SUGGESTED ROUTING

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- Legal & Compliance
- Senior Management

KEY TOPICS

- Dispute Resolution
- Mediation

Executive Summary

On August 11, 2000, the Securities and Exchange Commission (SEC) approved a change to the Code of Arbitration Procedure (Code) to permit NASD Dispute Resolution, Inc., (NASD Dispute ResolutionSM) to implement a new fee structure for its mediation services.¹ When the rule change becomes effective, NASD Dispute Resolution will replace its current flat fee for cases filed directly as mediations with a sliding-scale fee schedule that will result in lower fees to mediate smaller claims.

The rule change also affects cases filed as arbitrations that move to mediation. NASD Dispute Resolution will now charge the parties in such cases a mediation filing fee, except that no fee will be charged if a case involves claims of \$25,000 or less. Previously, no mediation filing fee was assessed when parties in arbitration decided to mediate. However, as an inducement to parties to mediate cases in arbitration, parties will no longer pay the arbitration adjournment fee if they choose to mediate with NASD Dispute Resolution. The rule change also makes it clear that parties that choose to mediate can adjourn their arbitration, so they are not participating in two processes simultaneously. The rule change becomes effective for mediations filed on or after November 1, 2000.²

Attachment A outlines the Code changes.

Questions/Further Information

Questions regarding this *Notice* may be directed to Kenneth L. Andrichik, Associate Vice President and Director of Mediation, NASD Dispute Resolution, at (212) 858-3915, e-mail: ken.andrichik@nasd.com;

Elizabeth McCoy, Assistant Director of Mediation, NASD Dispute Resolution, at (212) 858-4341, e-mail: elizabeth.mccoy@nasd.com; or Louise Corso, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-6939, e-mail: louise.corso@nasd.com.

Background

NASD Regulation initiated a mediation program in 1995 to provide an additional dispute resolution option for parties. The mediation program provides public customers, member firms, and associated persons with an alternative and effective means for resolving their disputes.

NASD Dispute Resolution reviewed its mediation program, which is currently subsidized by the National Association of Securities Dealers, Inc. (NASD[®]), and determined to adjust its mediation fee schedule. The new mediation fee schedule helps offset the operational costs of the mediation program while preserving mediation as a cost-effective alternative to arbitration for parties with claims of any dollar value. Mediation fees remain payable only after opposing parties agree to submit a case to mediation.

The major changes approved by the SEC are summarized in this *Notice*. Attachment A includes all of the textual changes to the Code.

Mediation Case Filing Fees For Cases Filed Directly In Mediation

About 15 percent of the mediation cases filed annually are filed directly in mediation. NASD Dispute Resolution presently charges \$150

per party for customer cases and \$250 per party for intra-industry cases, regardless of the amount in dispute.³ NASD Dispute Resolution will replace the flat fee with a sliding scale fee schedule detailed in new Rule 10407(a). The new schedule lists the filing fees for customers and associated persons, as well as the filing fees for member firms. The filing fees are lowest for the smallest claims but increase as the amount in controversy increases. For all claims, regardless of the amount in dispute, customers and members will pay less than the corresponding filing fees for arbitration.

Mediation Case Filing Fees For Cases Initially Filed In Arbitration

About 85 percent of the mediation cases filed annually are first filed in arbitration and later move to mediation. Under new Rule 10407(b), NASD Dispute Resolution will charge mediation filing fees for cases over \$25,000 to parties choosing mediation after the arbitration case is already filed. For cases of \$25,000 or less, consistent with its efforts to provide incentives for parties to mediate small claims, NASD Dispute Resolution will not impose any filing fees under the new rule. For higher dollar-value

cases, because NASD Dispute Resolution would like to continue to encourage members and investors to mediate although they may have an arbitration case pending, total filing fees will be smaller than for those cases filed directly in mediation.

Adjourning Arbitration During Mediation

NASD Dispute Resolution will amend Rule 10403 of the Code in two ways. First, new language is added to Rule 10403(a) to make it clear that parties in an arbitration that agree to submit a matter for mediation can also agree to adjourn the arbitration. The parties can do so notwithstanding Rule 10319 that gives arbitrators discretion to adjourn an arbitration proceeding. NASD Dispute Resolution believes that this rule change benefits the parties by saving them time and money and by relieving them of the problems of proceeding in two arenas at the same time. Moreover, this change is consistent with the approach taken by other alternative dispute resolution providers.

Second, NASD Dispute Resolution has added a new provision, Rule 10403(b), that encourages the use of the NASD Dispute Resolution mediation program. Whenever the

mediation is conducted through NASD Dispute Resolution, the parties will avoid payment of arbitration adjournment fees.

Additional Efforts To Encourage Mediation Of Small Claims

In addition to changing the Code, NASD Dispute Resolution has recently asked its mediators to help reduce the cost of mediation for small cases by agreeing to charge reduced rates to mediate claims involving \$25,000 or less. Over half of all NASD Dispute Resolution mediators have agreed to charge \$50 an hour for mediations in which the disputed amount is \$25,000 or less.

Endnotes

¹Exchange Act Release No. 43147 (August 11, 2000) (File No. SR-NASD-00-11), 65 Federal Register 50582 (August 18, 2000).

²The new rule will be effective for any mediation filed on or after November 1, 2000, *i.e.*, those filed directly as mediations and those converted from a pending arbitration.

³These fees are currently outlined in Rules 10205(j) and 10332(i).

Attachment A

Text Of Amendments

(New text is underlined; deleted text is in brackets.)

Rule 10205. Schedule of Fees for Industry and Clearing Controversies

(a) – (i) No change.

[(j) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$250. The parties to a mediation administered by the Association shall 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 the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session:
\$600 or four (4) times the

mediator's hourly rate agreed to by the parties and the mediator;
and

(2) Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed to by the parties and the mediator.]

* * *

Rule 10332. Schedule of Fees for Customer Disputes

(a) – (h) No change.

[(i) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$150.]

[(j) The parties to a mediation administered by the Association shall 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 the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other

expenses, are as follows:

(1) Initial Mediation Session:
\$600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator;
and

(2) Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed to by the parties and the mediator.]

* * *

Rule 10403. Arbitration Proceedings

(a) Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code. When all parties agree to stay the arbitration in order to mediate the claim, the arbitration proceeding shall be stayed, notwithstanding any provision to the contrary in this Code.

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

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Rule 10407. Mediation Fees

(a) Filing Fees: Cases Filed Directly in Mediation

Each party to a matter submitted directly to a mediation administered by the Association shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

<u>Amount in Controversy</u>	<u>Customer and Associated Person Fees</u>	<u>Member Fee</u>	<u>Total Fees</u>
<u>\$.01-\$25,000</u>	<u>\$ 50</u>	<u>\$150</u>	<u>\$200</u>
<u>\$25,000.01-\$100,000</u>	<u>\$150</u>	<u>\$300</u>	<u>\$450</u>
<u>Over \$100,000</u>	<u>\$300</u>	<u>\$500</u>	<u>\$800</u>

(b) Filing Fees: Cases Initially Filed in Arbitration

When a matter is initially filed in arbitration and subsequently submitted to a mediation administered by the Association, each party shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

<u>Amount in Controversy</u>	<u>Customer and Associated Person Fees</u>	<u>Member Fee</u>	<u>Total Fees</u>
<u>\$.01-\$25,000</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>
<u>\$25,000.01-\$100,000</u>	<u>\$100</u>	<u>\$150</u>	<u>\$250</u>
<u>Over \$100,000</u>	<u>\$250</u>	<u>\$500</u>	<u>\$750</u>

(c) Mediator Fees and Expenses

The parties to a mediation administered by the Association shall 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 the Association its proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session.

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