

NASD Notice to Members 98-90

New Arbitrator List Selection Rules And Monetary Thresholds For Simplified And Single Arbitration Cases Take Effect

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Executive Summary

On October 14, 1998, the Securities and Exchange Commission (SEC) approved rule changes proposed by the National Association of Securities Dealers, Inc. (NASD[®]) relating to the selection of arbitrators.¹ The arbitrator list selection rules and related amendments to the Code of Arbitration Procedure will be effective on November 17, 1998. The list selection rules will allow the parties to an arbitration to have a significant role in selecting the arbitrators that will hear their dispute.

The NASD is also declaring effective previously approved increases in the ceilings for simplified arbitration cases and for cases eligible for resolution by a single arbitrator from \$10,000 to \$25,000, and from \$30,000 to \$50,000, respectively.²

Questions concerning this *Notice* should be directed to Sharon Zackula, Assistant General Counsel, NASD Regulation, Inc. (NASD RegulationSM), (202) 728-8985 (customer disputes) or Jean I. Feeney, Assistant General Counsel, NASD Regulation, (202) 728-6959 (intra-industry disputes).

New Arbitration Procedures For The Selection Of Arbitrators In Customer Disputes And Intra-Industry Disputes

The list selection rules will allow the parties to an arbitration to have a significant role in selecting the arbitrators who will hear their dispute. The new procedures will incorporate newly developed software, the Neutral List Selection System (NLSS), which can generate lists of arbitrators in a neutral fashion. Using the lists, the parties may state preferences among the listed arbitrators by numerically ranking them. After parties rank the listed arbitrators, NLSS will consolidate the parties' rankings of the listed arbitrators, and the arbitration panel will be selected in

accordance with the rankings. NLSS will also perform many other administrative functions in the arbitrator selection process.

The text of these rules and other related amendments that go into effect on November 17, 1998, is set forth at the end of this *Notice*.

New Thresholds For Simplified Arbitration

The new thresholds for simplified and single arbitration cases will also take effect simultaneously with the effectiveness of the list selection procedures announced in this *Notice*. Cases involving claims of no more than \$25,000 (up from \$10,000) will be eligible for resolution under the procedures specified in Rules 10203 and 10302, which provide for the resolution of such cases on the paper record (or after a hearing if demanded by the claimant) by a single arbitrator. Cases involving claims of no more than \$50,000 (up from \$30,000) may be resolved after a hearing by a single arbitrator. In both instances, the single arbitrator will be selected in accordance with the new list selection rules.

Effectiveness Of The New Procedures

The NASD intends to make the rule change effective on November 17, 1998.

A case will be subject to revised Rules 10202, 10203, and 10308 if, as of November 17, 1998, NASD Regulation has not mailed or otherwise transmitted a letter or other written communication to the parties notifying the parties of the names of the arbitrators appointed to hear the arbitration. In addition, as of November 17, 1998, the newly adopted changes to Rule 10104, Rules 10309 through 10313, and Rule 10315 will apply to this group of cases.

A case will be subject to current Rules 10202, 10203, and 10308 for the purpose of selecting an arbitration panel, if, before the effective date of the rule change, NASD Regulation identifies the arbitrator (in a case having one arbitrator) or the three-arbitrator panel (in a case having three arbitrators) and mails or otherwise transmits a letter or other written communication to the parties notifying the parties of the names of the arbitrators. However, as of November 17, 1998, such cases also will be subject to all provisions of amended Rule 10308, except those relating to the initial process of selecting an arbitration panel. In addition, the newly adopted changes to Rule 10104, Rules 10309 through 10313, and Rule 10315 will apply to this group of cases. Below are four examples of how the old rules and the amended rules intersect and will be applied to the group of cases for which a panel is appointed initially under current Rule 10308.

- **Peremptory Challenge** - In such cases, a party retains the right provided under current Rule 10311 to one peremptory challenge of an appointed arbitrator, because the party has not been able to exercise the parallel right of striking an undesirable arbitrator in the pre-appointment phase that is provided under amended Rule 10308. The party choosing to exercise this right should follow the procedure set forth in Rule 10311.

- **Chairperson** - The provisions of amended Rule 10308 will apply to such cases if the Director of Arbitration has not already selected the chairperson. Amended Rule 10308 (c)(5) grants the parties the right to select a chairperson. If the parties fail to act within the specified time, the Director must select a chairperson. The Director's authority to act is specifically stated in amended Rule 10308(c)(5) and generally stated in paragraph (e). Under paragraph

(c)(5), the Director must appoint a chairperson subject to three limitations, one of which is how the parties ranked the arbitrators. Since the Director will not have party rankings of arbitrators, the Director will appoint a chairperson subject to the two other limitations set forth in amended Rule 10308(c)(5), pursuant to the general authority in paragraph (e).

- **Right to Receive Arbitrator Information and Request Additional Information** - A party will retain the right under current Rule 10310 to receive employment information and information disclosed pursuant to Rule 10312 about the arbitrators that have been appointed for his or her case and to make additional inquiries about an arbitrator. A party's right to receive such information is included in amended Rule 10308; the NASD is simply clarifying that such information about arbitrators shall be provided to a party either pursuant to current Rule 10310 in cases where the arbitrators are appointed under current Rule 10308 or pursuant to amended Rule 10308(b)(6) in cases where arbitrators are appointed under amended Rule 10308.

- **Right to Challenge a Replacement Arbitrator** - A party will not retain the right in Rule 10310 to challenge a replacement arbitrator for cases where the arbitrators are appointed under current Rule 10308. Instead, a party may exercise the right to object to a replacement arbitrator under amended Rule 10308(d).

NASD Regulation believes that this is the most appropriate approach to provide the benefits of list selection to the greatest number of parties as quickly as possible. List selection provides the parties additional input into the arbitration proceeding, and applying the new process for the appointment of arbitrators to certain cases filed shortly before the date of effectiveness will provide the benefits

to such parties. NASD Regulation does not believe that any party will suffer an unfair surprise if the list selection rule and the other rule changes are applied to an arbitration case filed prior to November 17, 1998. Finally, in order to implement the proposed rule change, NASD Regulation must make a number of operational changes. The administrative burdens of fully implementing the list selection process nationwide are many, and NASD Regulation believes that the benefits of implementing the new procedures rapidly and system-wide outweigh the benefits, if any, obtainable from continued use of the old system.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

Rule 10104. Composition and Appointment of Panels

Except as otherwise specifically provided in Rule 10308, ~~t~~^[T]he Director [of Arbitration] shall compose and appoint panels of arbitrators from the existing pool of arbitrators of the Association to conduct the arbitration of any matter which shall be eligible for submission under this Code. [The Director of Arbitration may request that the Executive Committee of the National Arbitration Committee undertake the composition and appointment of a panel or undertake consultation with the Executive Committee regarding the composition and appointment of a panel in any circumstance where he determines such action to be appropriate.]

Rule 10202. Composition of Panels

(a) In disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving

employment contracts, promissory notes or receipt of commissions, the panel of arbitrators shall be appointed as provided by paragraph (b)(1) or (2) or Rule 10203, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators shall be appointed as provided by Rule 10302 or Rule 10308, whichever is applicable.

(b) [(1) Except as otherwise provided in paragraph (a) or Rule 10203, in all arbitration matters between or among members and/or persons associated with members, and where the amount in controversy does not exceed \$30,000, the Director of Arbitration shall appoint a single arbitrator to decide the matter in controversy. The arbitrator chosen shall be from the securities industry. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators, all of whom shall be from the securities industry.]

(1) Composition of Arbitration Panel

(A) Claims of \$50,000 or Less

If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration panel composed of one non-public arbitrator, unless the parties agree to the appointment of a public arbitrator.

(i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case

requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(B) Claims of More than \$50,000

If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(2) Except as otherwise provided in paragraph (a), in all arbitration matters between or among members and/or persons associated with members and where the amount in controversy exceeds [~~\$30,000~~ \$50,000, exclusive of attendant costs and interest, a panel shall consist of three arbitrators, all of whom shall be [from the securities industry] non-public arbitrators.

(c) In proceedings relating to injunctions under Rule 10335, the provisions of Rule 10335 shall supersede the provisions of this Rule.

(d) Except as otherwise provided in this Rule or Rule 10203, the provisions of Rule 10308 shall apply to intra-industry disputes.

Rule 10203. Simplified Industry Arbitration

(a) Any dispute, claim, or controversy arising between or among members or associated persons submitted to arbitration under this Code involving a dollar amount not exceeding [~~\$10,000~~ \$25,000, exclusive of attendant costs and interest, shall be resolved by an arbitration panel constituted pursuant to the provisions of subparagraph (1) hereof solely upon the pleadings and documentary evidence filed by the parties, unless one of the parties to the proceeding files

with the Office of the Director of Arbitration within ten (10) business days following the filing of the last pleading a request for a hearing of the matter.

(1) In any proceeding pursuant to this Rule, an arbitration panel shall consist of [no fewer than one (1) but no more than three (3) arbitrators, all of whom shall be from the securities industry] a single non-public arbitrator.

(2) No Change

(b) No Change

Rule 10302. Simplified Arbitration

(a) Any dispute, claim, or controversy arising between a public customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding [~~\$10,000~~ \$25,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) No Change

(c) The Claimant shall pay a non-refundable filing fee and shall remit a hearing session deposit as specified in Rule 10332 of this Code upon the filing of the Submission Agreement. The final disposition of the fee or deposit shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be

filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third-Party Respondent with an executed Submission Agreement, a copy of the Respondent's Answer containing the Third-Party Claim, and a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding [\$10,000] \$25,000 exclusive of attendant costs and interest, the arbitrator may refer the Claim, Counterclaim and/or Third-Party Claim, if any, to a panel of three (3) [or five (5)] arbitrators in accordance with Rule 10308 or, he may dismiss the Counterclaim and/or Third-Party Claim without prejudice to the Counterclaimant(s) and/or Third Party Claimant(s) pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 10332.

(e) No Change

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry [selected] appointed by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a

hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) No Change

(h)(1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(2) If a hearing is demanded or consented to in accordance with paragraph (f), the General Provisions Governing Pre-Hearing Proceedings under Rule 10321 shall apply.

(3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its request for document production on all parties. Any response or objections to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The [selected] appointed arbitrator shall resolve all requests under this Rule on the papers submitted.

(i) - (l) No Change

Rule 10308. [Designation of Number of Arbitrators] Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

[Rule text replaced in its entirety.]

(a) Definitions

(1) "day"

For purposes of this Rule, the term "day" means calendar day.

(2) "claimant"

For purposes of this Rule, the term "claimant" means one or more persons who file a single claim.

(3) "Neutral List Selection System"

The term "Neutral List Selection System" means the software that maintains the roster of arbitrators and performs various functions relating to the selection of arbitrators.

(4) "non-public arbitrator"

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past three years, was:

(i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) "public arbitrator"

(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and is not:

(i) engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(ii) the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) For the purpose of this Rule, the term "immediate family member" means:

(i) a family member who shares a home with a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(iii) a person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(6) "respondent"

For purposes of this Rule, the term "respondent" means one or more persons who individually or jointly file an answer to a complaint.

(7) "send"

For purposes of this Rule, the term "send" means to send by first class mail, facsimile, or any other method available and convenient to the parties and the Director.

(b) Composition of Arbitration Panel; Preparation of Lists for Mailing to Parties

(1) Composition of Arbitration Panel

(A) Claims of \$50,000 or Less

If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration panel composed of one public arbitrator, unless the parties agree to the appointment of a non-public arbitrator.

(i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

(ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

(B) Claims of More Than \$50,000

If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.

(2) One List for Panel of One Arbitrator

If one arbitrator will serve as the arbitration panel, the Director shall send to the parties one list of public arbitrators, unless the parties agree otherwise.

(3) Two Lists for Panel of Three Arbitrators

If three arbitrators will serve as the arbitration panel, the Director shall send two lists to the parties, one with the names of public arbitrators and one with the names of non-public arbitrators. The lists shall contain numbers of public and non-public arbitrators, in a ratio of approximately two to one, respectively, to the extent possible, based on the roster of available arbitrators.

(4) Preparation of Lists

(A) Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the lists of public and non-public arbitrators on a rotating basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest identified within the Neutral List Selection System database.

(B) If a party requests that the lists include arbitrators with expertise classified in the Neutral List Selection System, the lists may include some arbitrators having the designated expertise.

(5) Sending of Lists to Parties

The Director shall send the lists of arbitrators to all parties at the same time approximately 30 days after the last answer is due.

(6) Information About Arbitrators

The Director shall send to the parties employment history for each listed arbitrator for the past 10 years and

other background information. If a party requests additional information about an arbitrator, the Director shall send such request to the arbitrator, and shall send the arbitrator's response to all parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for the parties to return the ranked lists under paragraph (c)(2).

(c) Striking, Ranking, and Appointing Arbitrators on Lists

(1) Striking and Ranking Arbitrators

(A) Striking An Arbitrator

A party may strike one or more of the arbitrators from each list for any reason.

(B) Ranking - Panel of One Arbitrator

Each party shall rank all of the arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on.

(C) Ranking - Panel of Three Arbitrators

Each party shall rank all of the public arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each party separately shall rank all of the non-public arbitrators remaining on the list, using the same procedure.

(2) Period for Ranking Arbitrators; Failure to Timely Strike and Rank

A party must return to the Director the list or lists with the rankings not later than 20 days after the Director sent the lists to the parties, unless

the Director has extended the period. If a party does not timely return the list or lists, the Director shall treat the party as having retained all the arbitrators on the list or lists and as having no preferences.

(3) Process of Consolidating Parties' Rankings

The Director shall prepare one or two consolidated lists of arbitrators, as appropriate under paragraph (b)(2) or (b)(3), based upon the parties' numerical rankings. The arbitrators shall be ranked by adding the rankings of all claimants together and all respondents together, including third-party respondents, to produce separate consolidated rankings of the claimants and the respondents. The Director shall then rank the arbitrators by adding the consolidated rankings of the claimants, the respondents, including third-party respondents, and any other party together, to produce a single consolidated ranking number, excluding arbitrators who were stricken by any party.

(4) Appointment of Arbitrators

(A) Appointment of Listed Arbitrators

The Director shall appoint arbitrators to serve on the arbitration panel based on the order of rankings on the consolidated list or lists, subject to availability and disqualification.

(B) Discretion to Appoint Arbitrators Not on List

If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director shall appoint one or more Arbitrators to complete the arbitration panel. Unless the parties agree otherwise, the Director may not appoint a non-public arbitrator under paragraphs (a)(4)(B) or (a)(4)(C). The Director shall provide the parties information

about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).

(5) Selecting a Chairperson for the Panel

The parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties cannot agree, the Director shall appoint a chairperson from the panel as follows:

(A) The Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties as long as the person is not an attorney, accountant, or other professional who has devoted 50% or more of his or her professional or business activities, within the last two years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters.

(B) If the most highly ranked public arbitrator is subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the other public arbitrator, as long as the person also is not subject to the exclusion set forth in subparagraph (A).

(C) If both public arbitrators are subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties.

(6) Additional Parties

If a party is added to an arbitration proceeding before the Director has consolidated the other parties' rankings, the Director shall send to that party the list or lists of arbitrators and permit the party to strike and rank the arbitrators. The party must return to

the Director the list or lists with numerical rankings not later than 20 days after the Director sent the lists to the party. The Director shall then consolidate the rankings as specified in this paragraph (c).

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) Disqualification By Director

After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice.

(2) Authority of Director to Disqualify Ceases

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director's authority to remove an arbitrator from an arbitration panel ceases.

(3) Vacancies Created by Disqualification or Resignation

Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If

there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).

(e) Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and the Rule 10000 Series to facilitate the appointment of arbitration panels and the resolution of arbitration disputes.

Rule 10309. Composition of Panels

Except as otherwise specifically provided in Rule 10308, t[T]he individuals who shall serve on a particular arbitration panel shall be determined by the Director [of Arbitration]. Except as otherwise specifically provided in Rule 10308, t[T]he Director [of Arbitration] may name the chairman of the panel.

Rule 10310. Notice of Selection of Arbitrators

(a) The Director shall inform the parties of the arbitrators' names and employment histories for the past 10 years, as well as information disclosed pursuant to Rule 10312, at least 15 business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director [of Arbitration] concerning an arbitrator's background. In the event that, prior to the first hearing session, any arbitrator should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the Director

shall appoint a replacement arbitrator to fill the vacancy on the panel. The Director shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director [of Arbitration] concerning the replacement arbitrator's background and within the time remaining prior to the first hearing session or the 10 day period provided under Rule 10311, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 10311.

(b) This Rule shall not apply to arbitration proceedings that are subject to Rule 10308.

Rule 10311. Peremptory Challenge

(a) In an[y] arbitration proceeding, each party shall have the right to one [(1)] peremptory challenge. In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the Claimants shall have one [(1)] peremptory challenge, the Respondents shall have one [(1)] peremptory challenge, and the Third-Party Respondents shall have one [(1)] peremptory challenge. The Director [of Arbitration] may in the interests of justice award additional peremptory challenges to any party to an arbitration proceeding. Unless extended by the Director [of Arbitration], a party wishing to exercise a peremptory challenge must do so by notifying the Director [of Arbitration] in writing within 10 business days of notification of the identity of the person(s) named under Rule 10310 or Rule 10321(d) or (e), whichever comes first. There shall be unlimited challenges for cause.

(b) This Rule shall not apply to arbitration proceedings that are subject to Rule 10308.

Rule 10312. Disclosures Required of Arbitrators and Director's Authority To Disqualify

(a) - (c) No Change

(d) Prior to the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing, the Director may remove an arbitrator based on information disclosed pursuant to this Rule.

([d]e) Prior to the commencement of the [first hearing session,] earlier of (1) the first pre-hearing conference or (2) the first hearing, [the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this Rule.] t[T]he Director [of Arbitration] shall [also] inform the parties to an arbitration proceeding of any information disclosed to the Director under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest or relationship described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator [pursuant to this Rule if the arbitrator is not removed].

(f) After the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing, the Director's authority to remove an arbitrator from an arbitration panel ceases. During this period, the Director shall inform the parties of any information disclosed by an arbitrator under this Rule.

Rule 10313. Disqualification or Other Disability of Arbitrators

In the event that any arbitrator, after the commencement of the earlier of (a) the first pre-hearing conference or (b) the first hearing but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within 5 days of notification of the vacancy on the panel. Upon objection, the Director [of Arbitration] shall appoint a replacement arbitrator to fill the vacancy and the hearing shall continue. The Director [of Arbitration] shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director [of Arbitration] concerning the replacement arbitrator's background. If the arbitration proceeding is subject to Rule 10308, the party may exercise his or her right to challenge the replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the name of the arbitrator challenged and the basis for such challenge. If the arbitration proceeding is not subject to Rule 10308, [and] within the time remaining prior to the next scheduled hearing session or the 5 day period provided under Rule 10311, whichever is shorter, a party may exercise the party's [its] right to challenge the replacement arbitrator as provided in Rule 10311.

Rule 10315. Designation of Time and Place of First Meeting [Hearing]

The Director shall determine t[T]he time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing. [initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators.] and shall give n[N]otice of the time and place [for the initial hearing shall be given] at least [eight (8)] 15 business days prior to the date fixed for the first meeting [hearing] by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give n[N]otice [for each hearing thereafter shall be given] as the arbitrators may determine. Attendance at a meeting [hearing] waives notice thereof.

Endnotes

¹Securities Exchange Act Rel. No. 40555 (October 14, 1998) (File No. SR-NASD-98-48) and Securities Exchange Act Rel. No. 40556 (October 14, 1998) (File No. SR-NASD-98-64).

²Securities Exchange Act Rel. No. 38635 (May 14, 1997) (File No. SR-NASD-97-22).

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