

# Notice to Members

FEBRUARY 2007

## SUGGESTED ROUTING

Suggested Routing  
Legal and Compliance  
Registered Representatives  
Senior Management  
Training  
Key Topics

## KEY TOPICS

Arbitration  
Code of Arbitration Procedure  
Dispute Resolution  
Mediation

## GUIDANCE

### Code of Arbitration Procedure

SEC Approves Revision of Customer and Industry Portions of NASD Code of Arbitration Procedure; **Effective Date: April 16, 2007**

#### Executive Summary

The Securities and Exchange Commission (SEC) has approved the NASD Codes of Arbitration Procedure for Customer and Industry Disputes (hereinafter referred to as the Customer and Industry Codes, respectively, or new Codes).<sup>1</sup> The Customer and Industry Codes reorganize the dispute resolution rules into separate procedural codes, simplify the language of the NASD Code of Arbitration Procedure (old Code), codify current practices and implement several substantive changes.

The Customer and Industry Codes can be accessed on the NASD Web site at the following links: [www.nasd.com/rulefilings/customercode](http://www.nasd.com/rulefilings/customercode) and [www.nasd.com/rulefilings/industrycode](http://www.nasd.com/rulefilings/industrycode). The Customer and Industry Codes will become effective on April 16, 2007, and will apply to claims filed on or after the effective date.<sup>2</sup>

In addition, the list selection provisions of the new Codes will apply to previously filed claims in which a list of arbitrators has not yet been generated and sent to the parties, or in which an entirely new list of arbitrators must be generated.<sup>3</sup> In these cases, even though a list has been generated under the new Customer or Industry Code, the claim will continue to be governed by the remaining provisions of the old Code unless all parties agree to proceed under the new Code.

#### Questions/Further Information

Questions regarding this *Notice* may be directed to Jean Feeny, Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959; or Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution, at (202) 728-8151.

07-07

---

## Summary of Key Changes

The new Codes benefit investors, brokerage firms, associated persons and other users of the forum in important ways. For example:

- ▶ The new Codes contain a new rule that defines commonly used terms applicable throughout the new Codes (Rule 12100 of the Customer Code and Rule 13100 of the Industry Code). In the old Code, some rules, such as old Rule 10308, contained definitions applicable to the rule only, but there was no general definitions rule that applied to the entire Code. The comprehensive definitions rule makes the new Codes easier to understand and to use, and helps eliminate confusion about the meaning and scope of frequently used terms.
- ▶ The new Codes give parties more flexibility and control over the arbitration process by clarifying which deadlines can be extended and establishing straight-forward procedures under the rules to exercise this option. Under the new Codes, parties may agree in writing to extend or modify any deadlines for serving an answer, returning arbitrator or chairperson lists, responding to motions, or exchanging documents or witness lists (Rule 12207 of the Customer Code and Rule 13207 of the Industry Code).
- ▶ The new Codes centralize the panel's authority to sanction parties for failure to comply with any provision of the Code or order of the panel (Rule 12212 of the Customer Code and Rule 13212 of the Industry Code). Also, the new Codes codify the sanction options available to arbitrators as currently described in the NASD Discovery Guide, and extend them beyond the discovery context to apply to non-compliance with any order of the panel or provision of the Codes.
- ▶ The new Codes improve the arbitrator selection process by:
  - using a new computer system—developed in conjunction with the new Codes to modernize the selection process—to generate lists of arbitrators on a random rather than rotational basis (Rule 12400 of the Customer Code and Rule 13400 of the Industry Code);
  - creating and maintaining a new roster of arbitrators who are qualified to serve as chairpersons. The chair roster consists of more experienced arbitrators available on NASD's public arbitrator roster for all investor cases (Rule 12400(b) and (c) of the Customer Code) and for certain intra-industry cases (Rules 13400(b)-(c) and 13402(b) of the Industry Code). For other industry cases, the Code also creates a chair roster of experienced non-public arbitrators (Rules 13400(b)-(c) and 13402(a) of the Industry Code);<sup>4</sup> and
  - expanding the number of names on lists of potential arbitrators for a panel, but limiting the number of strikes each separately represented party may use to select potential arbitrators for a panel from a list of potential arbitrators (Rule 12404 of the Customer Code and Rule 13404 of the Industry Code).

---

These changes, discussed in more detail below, will give parties more control over which arbitrators are selected for panels, ensure that the panels will contain experienced arbitrators, and improve the efficiency of case administration.

- ▶ The Customer Code codifies the discovery procedures currently outlined in the NASD Discovery Guide, with certain substantive changes (Rules 12505 - 12511 of the Customer Code). The Customer Code makes it clear that producing or objecting to documents on the Document Production lists described in the Discovery Guide, as well as other documents requested by parties, is mandatory. In addition to this change, the Customer Code codifies the sanctions provisions of the Discovery Guide, clarifying the authority of arbitrators to penalize parties for non-compliance with discovery rules or orders of the panel. Collectively, these changes, discussed in more detail below, should significantly reduce the number of discovery disputes in NASD arbitrations involving customer disputes.
- ▶ Under the new Codes, we revised the fee schedules to minimize confusion concerning filing fee requirements and to make them easier to read (Rules 12900 - 12903 of the Customer Code and Rules 13900 - 13903 of the Industry Code). NASD changed the fee schedules in two significant ways by:
  - combining the filing fee and the hearing session deposit into one single fee that the claimant pays when a claim is filed; and
  - condensing several sets of fee brackets in the filing fee schedule.

These changes, discussed in more detail below, greatly simplify the fee schedule, eliminate three repetitive high-end brackets, and align the brackets in the filing fee schedule with the brackets in the member filing fee and surcharge schedules.

The structural and substantive changes under the new Codes make the NASD arbitration process simpler and more uniform and transparent.

## Background and Discussion

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations to use “plain English” in disclosure documents and other materials used by investors. Under the initiative, the SEC recommended using shorter, more common words, breaking long rules into shorter ones, using the active voice whenever possible and putting lists into easy-to-read formatting, such as bullet points.

Because investors, including investors who appear *pro se* (that is, investors who represent themselves) used the old Code in the NASD forum, NASD undertook to rewrite the old Code in plain English. In revising the old Code, NASD implemented the plain English guidelines wherever possible. For example, NASD simplified language and eliminated unnecessarily legalistic terminology. We also broke up long rules, such as old Rule 10308 governing arbitrator selection, into several shorter rules. Where appropriate, the rules show lists in bullet point format, and use active verbs.

---

During the course of rewriting the old Code, the goals of the plain English initiative expanded beyond simplifying the language and sentence structure of the rules to include structural and substantive changes. While revising the old Code, NASD decided to:

- ▶ Reorganize the provisions in a more logical, user-friendly way, including creating separate Codes for customer and industry arbitrations, and for mediations;
- ▶ Codify several common practices to provide more guidance to parties and arbitrators; and
- ▶ Implement several substantive rule changes to streamline the administration of arbitrations in the NASD forum.

## Reorganization

Users of the old Code frequently complained about its organization. Parties, particularly infrequent users of the forum, had difficulty finding the rules they were looking for because the rules were not in the expected order of an arbitration case, and the titles were not always informative. In addition, certain rules in the old Code applied only to customer cases, other rules applied only to industry cases, and some rules applied to both, causing confusion. To address this concern, we reorganized the old Code into three separate procedural codes: the Customer Code, the Industry Code and the Mediation Code.<sup>5</sup>

NASD renumbered the three procedural codes, and each code has been assigned a separate numbering series. The Customer Code is in the 12000 series; the Industry Code is in the 13000 series; and the Mediation Code is in the 14000 series. The old Code's 10000 series will continue to be used for pending cases until they close.

Most rules of the Customer and Industry Codes are identical, except for panel composition, references to document production lists that apply only in customer cases, and rules relating to employment discrimination and injunctive relief that apply only to industry claims. Wherever possible, the last three digits of the rule numbers in the Customer and Industry Codes are the same. For example, under the Customer Code, the rule governing payment of arbitrators is Rule 12214; under the Industry Code, the same rule is Rule 13214.

---

In addition, the new Codes are organized in a manner that approximates the chronological order of a typical arbitration proceeding. Specifically:

- ◆ Part I contains a definitions rule, as well as rules relating to the organization and authority of the forum;
- ◆ Part II contains general arbitration rules, including what claims are subject to arbitration in the NASD forum;
- ◆ Part III contains rules explaining how to initiate a claim, how to respond to a claim, how to amend claims, and when claims may be combined and separated;
- ◆ Part IV contains rules relating to the appointment, authority and removal of arbitrators;
- ◆ Part V contains rules governing the prehearing process, including new rules relating to motions and discovery;
- ◆ Part VI contains rules relating to hearings;
- ◆ Part VII contains rules relating to the dismissal, withdrawal, or settlement of claims;
- ◆ Part VIII contains the simplified (small cases) arbitration rules (and in the Industry Code only, rules relating to statutory employment discrimination claims and injunctive relief); and
- ◆ Part IX contains rules relating to awards and fees.

## New Rules Codifying Well-Established Procedures

The new Codes include as new rules certain common practices in the NASD forum that were not part of the old Code. The most significant of these practices involves motion practice.

### **Motions Practice**

Motion practice has become routine in NASD arbitration, but the old Code was silent with respect to motions. As a result, arbitrators made individual decisions as to how to deal with motions submitted by the parties. New Rules 12503 and 13503 establish uniform procedures for filing, responding to and ruling on motions in NASD arbitrations.

The new Codes do not address expressly motions to decide claims before a hearing on the merits (dispositive motions). NASD filed a proposal with the SEC in July 2006 to adopt Rules 12504 and 13504 to address dispositive motions.<sup>6</sup> In the interim, Rules 12503 and 13503 will govern all motions, including dispositive motions, except that a party's response to a dispositive motion will not be due until the panel sets a deadline for the response. This approach is consistent with current practice, which will apply to dispositive motions until decisions are made with respect to the status of Rules 12504 and 13504.

---

Other new rules codifying current practice include:

- ▶ An *ex parte* communication rule (Rules 12210 and 13210), prohibiting a party from one-sided communications with arbitrators, unless otherwise permitted by the new Codes.<sup>7</sup>
- ▶ A sanction rule (Rules 12212 and 13212), codifying arbitrator authority to sanction parties for failing to comply with the Codes or with orders of the panel.
- ▶ Hearing location rules. For customer disputes, the rule codifies NASD's current practice of generally selecting the NASD hearing location closest to the customer's residence at the time of the events giving rise to the dispute (Rule 12213). For industry disputes involving an associated person, NASD generally will select the hearing location closest to where the associated person was employed at the time of the dispute (Rule 13213). If the dispute involves more than one associated person, or if only members are involved, the Director will consider a variety of factors when determining the hearing location.
- ▶ Deficient claims rules. A deficient claim is a claim that is filed without information or supporting documents required under the new Codes to process the claim. Some reasons a claim may be deficient include a missing or improperly signed Uniform Submission Agreement; a claim that does not specify the current address of the claimant or the claimant's representative; or a claim that does not include all required fees. Rules 12307 and 13307 codify existing practice regarding when a statement of claim may be considered deficient, and the time for correcting any deficiencies.
- ▶ Rules codifying current Initial Prehearing Conference practice (Rules 12500 and 13500).
- ▶ Rules codifying the practice of permitting the attendance of expert witnesses at all hearings (Rules 12602 and 13602).

---

## Rules Implementing Substantive Changes

The new Codes also contain a number of substantive rule changes or new rules intended to streamline and simplify the administration of arbitrations in the NASD forum, or to provide guidance to parties regarding issues not addressed by the old Code. The substantive changes, in the order they appear in the new Codes, are as follows:

### **Denial of NASD Forum**

Under the old Code, the Director of NASD Dispute Resolution (Director) had the authority to deny access to the arbitration forum if the Director determined that the arbitration claim was not a proper subject matter for NASD arbitration. Prior to making this determination, the Director had to seek approval from the National Arbitration and Mediation Committee (NAMC), a balanced committee of public and industry representatives, arbitrators and mediators that advises Dispute Resolution on arbitration rules and procedures.

The new Codes expand the grounds upon which the Director may deny access to the forum and authorize the Director to decline the use of the forum without having to seek prior approval from the NAMC (Rules 12203 and 13203). These rules give the Director more flexibility in addressing security concerns and other unusual, but serious situations that may require immediate resolution.

### **Amending Pleadings to Add Parties**

To begin an arbitration, a claimant must file a statement of claim specifying the relevant facts and remedies requested. The respondent must file an answer specifying the relevant facts and available defenses to the statement of claim. Parties also may file counterclaims, cross claims or third-party claims requiring answers. These documents, taken together, are referred to as pleadings.

Under the old Code, after parties filed a pleading, parties could amend a pleading at any time before an arbitration panel was appointed. Newly added parties could participate in list selection only if they were added before the other parties' arbitrator rankings were consolidated. After the panel was appointed, parties had to obtain approval from the panel to amend a pleading. Thus, under the old Code, a party could amend a pleading to add a party to the proceeding shortly before the panel was appointed, and the newly added party could neither participate in list selection nor object before being added to the arbitration.

To address this issue, the new Codes amend the rules to provide that no party may be added by amendment after ranked lists are due to the Director and before a panel is appointed and approves a request to add the party (Rules 12309 and 13309). The new rules also provide that a party to be added after panel appointment must be given an opportunity to be heard before the panel can grant the motion to amend (Rules 12407 and 13407). This change ensures that a party added to an arbitration by amendment either will be able to participate in list selection, or will be able to object to being added.

---

### Neutral List Selection System Enhancements

From November 1998 until October 2006, the Neutral List Selection System or NLSS was the computer system that generated lists of arbitrators from NASD's rosters of arbitrators for the selected hearing location for each proceeding. After NASD staff sent the list to the parties, the parties selected their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS.

On October 30, 2006, NASD replaced NLSS with a more user-friendly, Web-based application called MATRICS (Mediation and Arbitration Tracking and Retrieval Interactive Case System), which was designed and implemented to support the new Codes. All of the information contained in NLSS has been transferred to MATRICS; it is now the system that governs arbitrator selection in NASD arbitrations. Currently, only NASD staff has access to MATRICS, but NASD is developing additional functionality for MATRICS so that parties and arbitrators can use it as well.<sup>8</sup>

The new Codes contain several modifications to the rules governing arbitrator selection in NASD arbitrations. The new Codes modify list selection by:

- ▶ shifting from a rotational to a random system of generating arbitrator names for the lists sent to parties (Rules 12400(a) and 13400(a));
- ▶ creating a separate list of chair-qualified arbitrators from which the parties will select the chairperson of the panel (Rule 12400(c) and 13400(c)); and
- ▶ expanding the number of names of proposed arbitrators provided to the parties, but limiting the number of arbitrators from each list that each party may strike (Rules 12403, 12404, 13403 and 13404).

#### *Random Selection*

Under the old Code, NLSS generated lists of arbitrators from NASD's rosters of arbitrators on a rotational basis. Since the implementation of MATRICS, NASD has been generating lists of arbitrators on a random basis. NASD made the shift from rotational to random selection to assist the programming of MATRICS, and to provide arbitrators with an equal opportunity to be listed on any given list of proposed arbitrators for an arbitration panel.



---

### *Chairperson Roster*

Under the old Code, NLSS generated two lists of names of proposed arbitrators for three-person, majority-public panels: a list of ten public arbitrators and a list of five non-public arbitrators.<sup>9</sup> Parties could select their choices by striking arbitrators on the lists whom they did not want on the panel. The parties could strike an unlimited number of arbitrators. After exercising their strikes, the parties ranked the remaining arbitrators, if any, in order of preference and returned their selections to Dispute Resolution. Dispute Resolution consolidated the parties' lists and determined the members of the panel based on the parties' rankings. If insufficient names remained on the list after striking, ranking and consolidation, NLSS generated additional names in the proper category to fill the panel (subject only to challenges for cause). In three-arbitrator cases, the parties then had an opportunity to select a chair from the final list of three arbitrators on the panel. If the parties could not agree on a chair, Dispute Resolution would appoint as the chair the public arbitrator ranked most highly by the parties.<sup>10</sup>

The new Codes establish a new roster of chair-qualified arbitrators. Arbitrators are eligible to be placed on the chair roster if they meet certain criteria.<sup>11</sup> For a three-person, majority-public panel, parties receive three lists: public chair, public non-chair and non-public. MATRICS generates a list of names from each classification.<sup>12</sup> The parties may strike a limited number of arbitrators from each list, and then must rank the remaining arbitrators in order of preference. Once the parties return the ranked lists, Dispute Resolution consolidates the lists using the rankings of both parties to determine which arbitrator from each classification will be a member of the panel. In a single arbitrator case, we send the parties only the chair list. In intra-industry cases, the Industry Code specifies the panel composition for various types of cases, as described in Rules 13402, 13801, 13802 and 13803.

### *Striking and Ranking Arbitrators*

Under the old Code, after the ranking and striking process concluded, a sufficient number of names might not have remained on the list to fill a three-member panel. When that occurred, the computer generated additional names in the appropriate public or non-public categories and extended the list to fill the panel. Parties were dissatisfied with extended lists because they had no additional strikes to use, and could challenge arbitrators only for cause.

The new Codes modify the rules governing list generation, striking and ranking to increase the number of cases in which the arbitrators on a three-person panel originate from the initial lists sent to parties. Under the new rules, MATRICS selects eight arbitrators for each arbitrator position from the appropriate arbitrator roster (public or non-public chair, public and non-public) to generate the lists parties receive. Each separately represented party may strike up to four of the eight arbitrators on each list for any reason, but must leave at least four names on each list. This change does not eliminate the possibility of computer-generated extended lists, but makes them less likely, thereby providing parties with more control in the arbitrator selection process.

---

## Discovery Rules

Once parties have filed a claim and selected the arbitration panel, they request documents, names of witnesses and other information from each other to prepare their cases for the arbitration hearing. The process of requesting this information is called discovery.

The old Code did not contain detailed provisions relating to the discovery process, but instead relied on the separate Discovery Guide, which was issued as *Notice to Members* 99-90 in 1999. The NASD Discovery Guide provided parties in customer cases with guidance on which documents they should exchange without arbitrator or staff intervention, and provided guidance to arbitrators in determining which documents parties are presumptively required to produce. Perhaps because the provisions of the Discovery Guide were not incorporated into the old Code, parties routinely ignored the discovery guidelines, resulting in significant delays in arbitrations and the frequent need for arbitrator intervention.

To address these concerns and to expedite the discovery process, the new Codes contain many of the Discovery Guide procedures and sanctions. The document lists themselves do not appear in the Customer Code, and the Industry Code does not refer to the document lists since they do not apply to industry disputes.<sup>13</sup> The new discovery rules give parties more time to respond to document production lists and other requests than under the old Code and Discovery Guide, but also provide more stringent enforcement mechanisms when parties fail to respond, or when parties frivolously object to production of documents or information.

Some of the Discovery Guide provisions that have been incorporated in the new Customer Code are as follows:

### *Document Production Lists*

The Discovery Guide contains lists of documents, called “Document Production Lists,” that are presumed to be discoverable in all arbitrations between a customer and a member or associated person.

Under the old Code, parties had 30 days after the answer was due to provide the relevant documents on the Document Production Lists. If parties failed to comply with this timeframe, the old Code had no rules that specifically addressed non-compliance.

Under the new Customer Code (Rule 12506), parties must produce documents on the relevant Document Production Lists within 60 days from the date that the answer to the statement of claim is due, or explain why production is not possible, or object. NASD also has included a “good faith” standard for compliance in the new rules, so that frivolous delays, unreasonable timeframes or bad-faith objections would be subject to sanctions.

---

### *Depositions*

A deposition is a discovery practice in which one party (usually through counsel) questions another party or a witness under oath, outside of the hearing process.

The old Code did not contain a provision on depositions that was applicable generally in all arbitration hearings. The old Code did allow depositions in intra-industry arbitrations involving employment discrimination.

The new Codes incorporate the provisions on depositions from the Discovery Guide that strongly discourage depositions in arbitration (Rules 12510 and 13510).

### *Discovery Sanctions*

The old Code did not contain an enforcement mechanism to address non-compliance with the Discovery Guide provisions.

Under the new Codes (Rules 12511 and 13511), the panel may sanction parties who fail to produce documents or object within the relevant time frames. Sanctions may include levying monetary penalties, precluding a party from presenting evidence, making an adverse inference against a party, assessing postponement and forum fees and assessing attorneys' fees and expenses. The panel also may dismiss a claim, defense or arbitration with prejudice for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective.

### **Exchange of Documents and Witness Lists before a Hearing**

Under the old Code, parties were required to provide each other with copies of documents in their possession that they intended to present at the hearing and identify witnesses they intended to present at the hearing. These document exchange procedures often resulted in the exchange of material that had already been provided. This practice delayed hearings and added to the cost of the arbitration without significantly assisting parties in preparing for hearings.

Under the new Codes (Rules 12514 and 13514), parties must exchange only copies of documents that the other parties have not received. This change saves parties time, reduces cost and still ensures that parties exchange documents before a hearing that they intend to use at the hearing. Further, the Codes also strengthen the consequences of non-compliance by prohibiting parties from presenting at the hearing any documents or witnesses that should have been produced before the hearing. The panel, however, may determine that the party had "good cause" for not exchanging the evidence before the hearing and permit the party to present the evidence.

---

## Fees

Users of the old Code frequently complained that the fee schedules were difficult to understand, particularly regarding what parties have to pay when filing an arbitration. The fee schedules contained separate columns for a filing fee and a hearing session deposit, and both fees depended on how much parties claimed as their amounts in dispute. Under the old Code, parties paid a non-refundable filing fee and an initial hearing session deposit to start the arbitration process. Given the numerous fee schedules and related fees and deposits, some parties had trouble figuring out the total amount they had to pay when filing an arbitration claim.

Under the new Codes (Rules 12900 and 13900), the fee schedules are easier to read and understand. First, we combined the filing fee and hearing session deposit into a single fee that a party must pay when filing a claim. If parties settle or withdraw a claim more than 10 days before a hearing, and they owe no other fees or costs, NASD may refund a portion of the filing fee. Second, NASD condensed several sets of fee brackets in the filing fee schedule. The new Codes now contain fewer fee brackets showing how much a party will pay for claims in each bracket. In addition, the new Codes simplify the filing fee schedules without resulting in any significant changes to the amounts parties must pay to file an arbitration claim.

## Conclusion

In its approval order, the SEC noted that NASD had expressed its intent to provide staff and arbitrator training on significant changes to the arbitration process made by the new Codes. In the past few months, NASD has conducted several training sessions with staff to prepare for the implementation of the new Codes. NASD also created an online training module that provides an overview of the new Codes and focuses on the changes made to the arbitration process under the new Codes.

The online training module will be made available to arbitrators in the first quarter of 2007. Arbitrators will be required to complete the training on the new Codes in a timely manner. NASD staff also will use the module to continue their training on the new Codes. Other users of the forum will be able to access this online training for a fee.

The SEC suggested that NASD monitor the effectiveness of certain rules, and consider some of the public comments submitted on the new rules in determining whether future amendments are warranted. NASD plans to monitor the effectiveness of the new Codes and, when necessary, to propose amendments to address concerns expressed by users of the forum.

---

## Effective Date Provisions

The Customer and Industry Codes, and the renumbering of the Mediation Code, will become effective on April 16, 2007, and will apply to claims filed on or after the effective date.

In addition, the list selection provisions of the new Codes will apply to previously filed claims in which a list of arbitrators has not yet been generated and sent to the parties, or in which an entirely new list of arbitrators must be generated. In these cases, even though a list has been generated under the new Customer or Industry Code, the claim will continue to be governed by the remaining provisions of the old Code.

## Endnotes

- 1 Exchange Act Release No. 55158 (Jan. 24, 2007), 72 FR 4574 (Jan. 31, 2007) (Approval Order for File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).
- 2 Parties in cases filed before the effective date may stipulate in writing to adopt the Customer or Industry Code in its entirety (except for provisions that are moot as a result of the status of the case).
- 3 For example, when a motion for change of venue is granted and a case is moved from one hearing location to another, new lists may be required.
- 4 Chairpersons selected to hear intra-industry claims of statutory employment discrimination must meet the special qualifications of Rule 13802(c) of the Industry Code.
- 5 The SEC approved the Mediation Code on October 31, 2005, and it became effective on January 30, 2006. See Exchange Act Release No. 52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (File No. SR-NASD-2004-013). The Mediation Code will be amended to renumber the rules, update cross references and insert rule language that had been reserved until the new Codes were approved.
- 6 See Exchange Act Release No. 54360 (August 24, 2006); 71 FR 51879 (August 31, 2006) (File No. SR-NASD-2006-088). NASD is currently reviewing the comments submitted to the SEC on the proposal.
- 7 See Exchange Act Release No. 49688 (May 12, 2004); 69 FR 28966 (May 19, 2004) (File No. SR-NASD-2003-163, approving a rule to permit voluntary direct communication between parties and arbitrators).
- 8 NASD's online arbitration claim filing system is currently the only MATRICS function that parties may access. Parties also have online access to arbitration awards via NASD's Web site.
- 9 Under the new Codes, three-person, majority-public panels are used in customer cases and certain industry cases in which the amount in dispute is \$50,000 or more. For cases involving an amount of more than \$25,000, but not more than \$50,000, a single arbitrator, who will be public in customer cases and in certain industry cases, will hear these cases, unless any party requests a three-person panel in its initial pleading. The new Codes, like the old Code, provide for various types of panel composition in industry cases.
- 10 Staff could not appoint as chair public arbitrators who are attorneys, accountants or other professionals who have devoted 50% or more of their 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.

- 
- 11 In order to serve as a chairperson under the new Customer Code, the individual must:
- 1) be a public arbitrator; 2) have completed chairperson training provided by NASD or have substantially equivalent training or experience; and 3) have a law degree and be a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least two arbitrations administered by a self-regulatory organization in which hearings were held; or have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held. The new Industry Code contains the same chairperson criteria other than the public arbitrator requirement.
- 12 Arbitrators who are eligible to serve as chairperson also will be included in the roster of public arbitrators, but will only appear on one list in a particular case.
- 13 The new Codes do not replace the Discovery Guide entirely. The revised Discovery Guide contains some explanatory provisions and the lists of documents that are presumptively discoverable in customer cases.

---

©2007. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.