

By Messenger

November 24, 1999

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549  
Mail Stop 10-1

Re: File No. SR-NASD-99-54 - Implementation of Single Arbitrator Pilot Program,  
Amendment No. 1

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed is Amendment Number 1 to the above-numbered rule filing.

If you have any questions, please contact Jean I. Feeney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-6959; e-mail [jean.feeney@nasd.com](mailto:jean.feeney@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Alden S. Adkins  
Senior Vice President and  
General Counsel

cc: Joseph Corcoran

Attachment

NASD Regulation hereby amends SR-NASD-99-54 as follows (deletions are bracketed and additions are underscored):

*On pages 2-3 and 18:*

**(a) Claims Eligible for Single Arbitrator Pilot Program**

(1) Claims arising between a customer and an associated person or a member for amounts from \$50,000.01 to \$200,000, including damages, interest, costs, and attorneys' fees, will be eligible to be heard by a single arbitrator pursuant to this Rule ("Pilot Program"), except as provided in paragraph (a)(2) or (b)[(2)] (3) below.

*On pages 4 and 20:*

**(e) Awards**

The single arbitrator may not award the parties more than a total of \$200,000, including damages, interest, costs, and attorneys' fees, unless all parties agree that the arbitrator may award a larger amount. In addition, the arbitrator shall allocate forum fees to the parties as provided in Rule 10332(c).

*On page 5 and 20:*

**(g) Temporary Effectiveness**

This Rule shall remain in effect until {two years after effective date} [unless extended by the Association].

*On pages 7 and 22:*

Proposed paragraph (a)(1) describes the types of claims that are eligible for the Program. It states that claims arising between a customer and an associated person or a member are eligible for the Program. The Program will not be available for the resolution of employment disputes or other intra-industry disputes. The Pilot Program will be limited to claims seeking between \$50,000.01 and \$200,000. The minimum number was chosen because a single arbitrator is already generally prescribed by Rule 10308(b)(1)(A) for claims of up to \$50,000. Interest, attorneys' fees, and other costs will be included within the Pilot's \$200,000 claim limitation. All types of claims by all parties, including any counterclaims, third-party claims, and cross-claims, would be counted in the \$200,000 limitation, although NASD Regulation anticipates that most cases handled by the Pilot Program will be relatively straight forward. The arbitrator will allocate forum fees to the parties, as already provided in the Code, in addition to the amount of the award. This means that forum fees will not be counted in the \$200,000 limitation.

*On pages 8 and 23:*

This method was chosen because, based on user feedback, it appeared that parties would not be willing to use the Pilot Program unless they knew in advance who the single arbitrator would be. Under the proposed rule change, the parties will have background information on the potential panel members and will be able to make an informed decision as to whether to proceed with a single arbitrator. Because the parties may choose any one of the three arbitrators, it is possible that the single arbitrator will not be a public arbitrator. That person will, however, be a person agreed to by all parties.

*On pages 12 and 27:*

Proposed paragraph (e) provides that the single arbitrator may not award the parties more than a total of \$200,000, including damages, interest, costs, and attorneys' fees, unless all parties agree that the arbitrator may award a larger amount. In addition, the arbitrator will allocate forum fees to the parties as provided in Rule 10332(c). Therefore, parties will want to evaluate their claims carefully to ensure that they fit within the parameters of the Pilot Program.

*On pages 13 and 28:*

In the unlikely event that, during the course of the arbitration, a claimant learns of information that leads the claimant to believe there are additional claims, or higher claims than originally made, which would raise the total amount in controversy over the \$200,000 maximum, the claimant has the option of (i) [seeking a dismissal] asking the arbitrator to dismiss the case without prejudice under Rule 10305 and, if that request is granted, re-filing the revised claim as a regular, three-arbitrator case,<sup>1</sup> or (ii) asking the other parties to stipulate that the single arbitrator may award more than \$200,000. NASD Regulation does not anticipate that such issues will arise with any frequency.

*On pages 13-14 and 28-29:*

Paragraph (g) provides that the proposed Rule will remain in effect until two years after the effective date[, unless extended by the Association]. Prior to the expiration of the Pilot Program, NASD Regulation may decide to extend the Program, and would then request SEC approval for an extension. NASD Regulation staff will develop an

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<sup>1</sup> Rule 10305(a) provides that arbitrators may dismiss a proceeding at the request of a party or on the arbitrators' own initiative. Therefore, the single arbitrator has the discretion to determine whether or not

evaluation form to solicit feedback from Pilot participants. This feedback will be used to consider whether to continue or terminate the Pilot, or whether additional refinements to the Pilot are necessary.

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to grant a request for dismissal. Rule 10305(c) provides that arbitrators shall dismiss a proceeding at the joint request of all the parties.