

August 9, 2001

Florence Harmon
Senior Special Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-00-02 - Amendments to NASD Code of Arbitration
Procedure Rules 10335 and 10205(h) Relating to Injunctive Relief –
Amendment No. 5 and Extension of Time for Commission Action**

Dear Ms. Harmon:

At the suggestion of the Commission staff, NASD Dispute Resolution, Inc. hereby amends the above-referenced rule filing as described below, and extends the time for Commission action on the above-referenced rule filing to October 1, 2001.

Content and Service of Statement of Claims

Paragraph (a)(3) of the proposed rule is amended as follows:

A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file with the Director a Statement of Claim requesting permanent injunctive and all other relief with respect to the same dispute in the manner specified under this Code. [and shall simultaneously] The party seeking temporary injunctive relief shall also serve the Statement of Claim requesting [such] permanent injunctive and all other relief on all other parties in the same manner and at the same time as the Statement of Claim is filed with the Director. Filings and service under this Rule [may] shall be made by facsimile, overnight delivery service or messenger. Service shall be made on all parties at the same time and in the same manner, unless the parties agree otherwise. A party obtaining a court-issued temporary injunctive order shall notify the Director and the other parties of the issuance of the order within one business day.

Appointment of Arbitrators

The Commission staff suggested that the proposed rule be amended to state explicitly that the Director will provide background information regarding the arbitrators on the list(s) provided to the parties pursuant to paragraphs (b)(3)(A) and (b)(3)(B), and that once the parties have ranked the listed arbitrators, the Director will then appoint arbitrators based on those rankings in accordance with paragraphs (c)(3) and (c)(4) of Rule 10308.

Therefore, paragraph (b)(3)(A) of the proposed rule is amended as follows.

(i) In cases in which all of the members of the arbitration panel are non-public under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators. The Director shall send to the parties the employment history for the past 10 years for each listed arbitrator and other background information. At least three of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.

Likewise, paragraph (b)(3)(B) is amended as follows:

(i) In cases in which the panel of arbitrators consists of a majority of public arbitrators under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information. At least a majority of the arbitrators listed shall be public arbitrators, and at least four of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.

Conforming Amendment

In its third amendment to this rule filing, NASD Dispute Resolution amended the proposed rule to change all references to “lawyers specializing in injunctive relief” to “lawyers with experience litigating cases involving injunctive relief.”¹ At the time, one such reference was inadvertently not changed. Therefore, NASD Dispute Resolution is hereby amending the last sentence of paragraph (b)(3)(C)(ii) as follows:

Whenever possible, the Director shall select as chairperson the lawyer [specializing in injunctive relief] with experience litigating cases involving injunctive relief whom the parties have ranked the highest.

For your convenience, enclosed is a 3-1/2" disk containing Exhibit 1 to the amendments to the proposed rule change filed since the Commission published the proposed rule change for comment on April 7, 2000, in Microsoft Word. If you have any questions, please contact me at (202) 728-8275; e-mail laura.gansler@nasd.com. The fax number of NASD Dispute Resolution, Inc. is (202) 728-8833.

Very truly yours,

Laura Leedy Gansler
Counsel
NASD Dispute Resolution, Inc.

¹ File No. SR-NASD-00-02 - Amendments to NASD Code of Arbitration Procedure Rules 10335 and 10205(h) Relating to Injunctive Relief – Amendment No. 3; Response to Comments; and Extension of Time for Commission Action (December 18, 2000).