

July 16, 2001

Florence Harmon, Esq.
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-01-21 – Amendments to NASD Code of Arbitration
Procedure to Modify Certain Provisions Relating to the Assessment and Payment
of Fees – Response to Comment and Amendment No. 2

Dear Ms. Harmon:

NASD Dispute Resolution, Inc. hereby responds to the comment letter received by the Securities and Exchange Commission from Charles Schwab & Co., Inc. regarding the above-referenced rule filing. This Amendment supersedes the July 5, 2001 letter amendment to the above-referenced rule filing, which is hereby withdrawn.¹

The proposed rule change would amend Rule 10306 of the Code of Arbitration Procedure to provide that when parties fail to allocate the payment of fees as part of the settlement agreement, the fees will be divided equally among all parties by default. Charles Schwab has no objection to this part of the proposed rule change.

The proposed rule change also modifies Rule 10306 to explicitly state what is already the case under the Code of Arbitration Procedure: that while the terms of any settlement agreement need not be disclosed, the settling parties “remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions.” In its May 22, 2001 comment letter, Charles Schwab expressed concern that under the proposed rule language, settling parties would now be responsible for hearing session fees for all hearings scheduled at the time of settlement. NASD Dispute Resolution believes that this concern is unfounded.

The proposed rule change states that settling parties remain responsible for “payment of fees incurred, including fees for previously scheduled hearing sessions.” It does not change or alter the amount or scope of those fees. Rule 10332(f) and (g) provide that settling parties are responsible for payment of hearing session fees for hearings held or

¹ See Letter to Florence Harmon, Esq., Senior Special Counsel, Division of Market Regulation, Securities and Exchange Commission, from Laura Gansler, Counsel, NASD Dispute Resolution, Inc., July 5, 2001.

scheduled within eight days of the date that NASD Dispute Resolution is notified of the settlement. Therefore, under both current rules and under the proposed rule change, settling parties are only responsible for fees for those hearing sessions that are held or scheduled within eight days of the date that NASD Dispute Resolution receives notice of the settlement. The parties would also remain responsible for all other fees incurred under the Code at the time of settlement.

However, NASD Dispute Resolution believes that deleting the reference to hearing session fees in the proposed amendments to Rule 10306 should eliminate any possible confusion regarding whether the proposed rule change would alter the Code's current provisions regarding what hearing session fees settling parties are required to pay. Therefore, NASD Dispute Resolution is hereby amending Rule 10306(b) of the proposed rule change as follows:

The terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution. However, the parties will remain responsible for payment of fees incurred under the Code. [, including fees for previously scheduled hearing sessions.] If the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.

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.