

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2004 - 013
Amendment No. 1

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☐	Amendment ☒	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Mignon Last Name McLemore
Title Counsel
E-mail mignon.mclemore@nasd.com
Telephone (202) 728-8151 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 01/03/2005

By Jean I. Feeney
(Name)

Vice President and Chief Counsel, Dispute Resolution

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Jean Feeney, jean.feeney@nasd.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

Add

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to reorganize its mediation rules. The proposed rule change is part of a comprehensive plan to reorganize NASD’s Code of Arbitration Procedure (“Code”) into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”); the NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”); and the NASD Code of Mediation Procedure (“Mediation Code”). NASD is also proposing to simplify the language and organization of all three Codes.

This rule filing contains the proposed Mediation Code, a copy of which is attached as an exhibit.¹ Also, a chart comparing the current mediation rules and the proposed Mediation Code is attached as an exhibit. An old-to-new conversion guide will be posted on the Web site at www.nasd.com.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Dispute Resolution at its meeting on November 12, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD

¹ The proposed Customer Code and the proposed Industry Code have been filed separately with the Commission as SR-NASD-2003-158 and SR-NASD-2004-011, respectively.

Regulation have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on November 13, 2003. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to Mignon McLemore, Counsel, NASD Dispute Resolution, at (202) 728-8151.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This rule filing is part of a comprehensive plan to reorganize and simplify the NASD Code of Arbitration Procedure. Specifically, NASD is proposing to reorganize its dispute resolution rules in a more logical, user-friendly way, including creating separate Codes for customer and industry arbitrations, and for mediations. At the same time, it is proposing to rewrite the three Codes using plain English, in accordance with the Commission's plain English guidelines. Although NASD is also proposing to implement several substantive rule changes to its arbitration rules, as described in the Customer and Industry Code rule filings, NASD is not proposing any substantive changes to the current rules governing mediations.

Reorganization

One of the most frequent criticisms of the current Code is that it is poorly organized. Parties, particularly infrequent users of the forum, have difficulty finding the

rules they are looking for, because the rules are not presented in a logical order. The confusion is compounded by the fact that certain rules in the Code apply only to customer cases, some apply only to industry cases, and still others apply to both types of disputes. In addition, the current Code contains the NASD mediation rules, despite the fact that many matters are submitted directly to mediation, and do not arise out of an arbitration proceeding.

To address these concerns, NASD is proposing to divide the current Code into three separate Codes: the Customer Code, the Industry Code, and the Mediation Code. NASD believes that maintaining separate Codes will make it easier for parties to find the rules that apply to their disputes, particularly for parties to disputes that are submitted directly to mediation. NASD will maintain electronic versions of each code on its Web site, www.nasd.com, and will make paper copies available upon request.

In keeping with the current NASD rule numbering system, each of the three codes will be numbered in the thousands, and major sections will be numbered in the hundreds. Individual rules within those sections will be numbered in the tens (or ones, if necessary). The current method for numbering and lettering paragraphs within individual rules will remain unchanged. The Customer Code will use the Rule 12000 series, the Industry Code will use the Rule 13000 series, and the Mediation Code will use the Rule 14000 series, all of which are also currently unused. NASD will reserve the Rule 10000 series, which is currently used for NASD's dispute resolution rules, for future use.

Plain English

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations ("SROs") to use "plain English" in disclosure documents and other

materials used by investors. At that time, the SEC published a “Plain English Handbook,” to provide guidance to issuers and SROs in drafting such materials. The Plain English Handbook recommended using shorter, more common words; breaking long rules into shorter ones; using the active voice whenever possible; and using easy-to-read formatting, such as bullet points. NASD has implemented these guidelines wherever possible in revising the proposed Mediation Code, as well as the proposed Customer and Industry Codes.

Proposed Definitions Rule

NASD is also proposing to add a comprehensive definitions rule to the Mediation Code (proposed Rule 14100). This rule would include definitions of terms used throughout the proposed Mediation Code. NASD believes that this rule will provide useful clarification for parties and mediators.

No Substantive Changes

The proposed rule change would establish a separate Mediation Code, and would shorten and simplify NASD’s current mediation rules in a manner consistent with the proposed Customer and Industry Codes. However, with the exception of adding a definitions rule, as described above, NASD is not proposing any substantive changes to its current rules governing mediations.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public

interest. NASD believes that the proposed rule change will protect the public interest by making its mediation rules easier to find, and by making the mediation process more accessible to parties.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

2. Redline of Text of Proposed NASD Code of Mediation Procedure.

3. Redline of the chart comparing the current Code and the proposed Mediation Code.

4. Text of Proposed NASD Code of Mediation Procedure

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2004-013)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend NASD Mediation Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 23, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), and amended on January 3, 2005, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to amend the NASD Code of Arbitration Procedure (“Code”) to reorganize the current rules, simplify the language, codify current practices, and implement several substantive changes. NASD is proposing to reorganize its current dispute resolution rules (Rules 10000 et. seq.) into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”); the NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”); and the NASD Code of Mediation Procedure (“Mediation Code”). The three new codes will replace the current NASD Code in its entirety.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

This rule filing contains the proposed Mediation Code, the text of which is attached as an Exhibit.³ Also, a chart comparing the current mediation rules and the proposed Mediation Code is attached as an exhibit. An old-to-new conversion guide will be posted on the Web site at www.nasd.com.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD has included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This rule filing is part of a comprehensive plan to reorganize and simplify the NASD Code of Arbitration Procedure. Specifically, NASD is proposing to reorganize its dispute resolution rules in a more logical, user-friendly way, including creating separate Codes for customer and industry arbitrations, and for mediations. At the same time, it is proposing to rewrite the three Codes using plain English, in accordance with the Commission's plain English guidelines. Although NASD is also proposing to implement several substantive rule changes to its arbitration rules, as described in the Customer and Industry Code rule filings, NASD is not proposing any substantive changes to the current rules governing mediations.

³ The proposed Customer Code and the proposed Industry Code have been filed separately with the Commission as SR-NASD-2003-158 and SR-NASD-2004-011, respectively.

Reorganization

One of the most frequent criticisms of the current Code is that it is poorly organized. Parties, particularly infrequent users of the forum, have difficulty finding the rules they are looking for, because the rules are not presented in a logical order. The confusion is compounded by the fact that certain rules in the Code apply only to customer cases, some apply only to industry cases, and still others apply to both types of disputes. In addition, the current Code contains the NASD mediation rules, despite the fact that many matters are submitted directly to mediation, and do not arise out of an arbitration proceeding.

To address these concerns, NASD is proposing to divide the current Code into three separate Codes: the Customer Code, the Industry Code, and the Mediation Code. NASD believes that maintaining separate Codes will make it easier for parties to find the rules that apply to their disputes, particularly for parties to disputes that are submitted directly to mediation. NASD will maintain electronic versions of each code on its Web site, www.nasd.com, and will make paper copies available upon request.

In keeping with the current NASD rule numbering system, each of the three codes will be numbered in the thousands, and major sections will be numbered in the hundreds. Individual rules within those sections will be numbered in the tens (or ones, if necessary). The current method for numbering and lettering paragraphs within individual rules will remain unchanged. The Customer Code will use the Rule 12000 series, the Industry Code will use the Rule 13000 series, and the Mediation Code will use the Rule 14000 series, all of which are also currently unused. NASD will reserve the Rule 10000 series, which is currently used for NASD's dispute resolution rules, for future use.

Plain English

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations (“SROs”) to use “plain English” in disclosure documents and other materials used by investors. At that time, the SEC published a “Plain English Handbook,” to provide guidance to issuers and SROs in drafting such materials. The Plain English Handbook recommended using shorter, more common words; breaking long rules into shorter ones; using the active voice whenever possible; and using easy-to-read formatting, such as bullet points. NASD has implemented these guidelines wherever possible in revising the proposed Mediation Code, as well as the proposed Customer and Industry Codes.

Proposed Definitions Rule

NASD is also proposing to add a comprehensive definitions rule to the Mediation Code (proposed Rule 14100). This rule would include definitions of terms used throughout the proposed Mediation Code. NASD believes that this rule will provide useful clarification for parties and mediators.

No Substantive Changes

The proposed rule change would establish a separate Mediation Code, and would shorten and simplify NASD’s current mediation rules in a manner consistent with the proposed Customer and Industry Codes. However, with the exception of adding a definitions rule, as described above, NASD is not proposing any substantive changes to its current rules governing mediations.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes

that the proposed rule change will protect the public interest by making its mediation rules easier to find, and by making the mediation process more accessible to parties.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person,

other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary

NASD CODE OF MEDIATION PROCEDURE

14100. Definitions

(a) Board

The term “Board” means the Board of Directors of NASD Dispute Resolution, Inc.

(b) Code

The term “Code” means the NASD Code of Mediation Procedure.

(c) Director

The term “Director of Mediation” refers to the Director of Mediation at NASD Dispute Resolution. Unless the Code or any other NASD rule provides otherwise, the term includes NASD staff to whom the Director has delegated authority.

(d) Matter

The term “matter” means a dispute, claim, or controversy.

(e) NAMC

The term “NAMC” means the National Arbitration and Mediation Committee of the Board of Directors of NASD Dispute Resolution, Inc.

(f) NASD

Unless the Code specifies otherwise, the term “NASD” includes NASD, Inc., and NASD Dispute Resolution, Inc.

(g) NASD Customer Code

The term “NASD Customer Code” means the NASD Code of Arbitration Procedure for Customer Disputes

(h) NASD Industry Code

The term “NASD Industry Code” means the NASD Code of Arbitration Procedure for Industry Disputes

(i) Submission Agreement

The term “Submission Agreement” means the NASD Mediation Submission Agreement. The NASD Mediation Submission Agreement is a document that parties must sign at the outset of a mediation in which they agree to submit to mediation under the Code.

14101. Applicability of Code

The Code applies to any matter submitted to mediation at NASD.

14102. National Arbitration and Mediation Committee

(a) The Board shall appoint a National Arbitration and Mediation Committee ("NAMC").

(1) The NAMC shall consist of no fewer than ten and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the Chairperson of the NAMC.

(b) The NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. All matters recommended by the NAMC to the Board must have been approved by a majority of the NAMC members present and voting. The NAMC has such other power and authority as is necessary to carry out the purposes of this Code.

(c) The NAMC may meet as frequently as necessary, but must meet at least once a year.

14103. Director of Mediation

(a) The Board shall appoint a Director of Mediation to administer mediations under the Code. The Director will consult with the NAMC on the administration of mediations, as necessary.

(b) The Director may delegate his or her duties when appropriate, unless the Code provides otherwise.

14104. Mediation Under the Code

(a) Mediation under the Code is voluntary, and requires the written agreement of all parties. No party may be compelled to participate in a mediation or to settle a matter by NASD, or any mediator appointed to mediate a matter pursuant to the Code.

(b) If all parties agree, any matter that is eligible for arbitration under the NASD Customer Code or NASD Industry Code, or any part of any such matter, or any dispute related to such matter, including procedural issues, may be submitted for mediation under the Code.

(c) A matter is submitted to mediation when the Director receives an executed Submission Agreement from each party

(d) The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.

14105. Effect of Mediation on Arbitration Proceedings

(a) Unless the parties agree otherwise, the submission of a matter for mediation will not stay or otherwise delay the arbitration of a matter pending at NASD. If all parties agree to stay an arbitration in order to mediate the matter, the arbitration will be stayed, notwithstanding any provision to the contrary in this Code or any other NASD rule.

(b) If mediation is conducted through NASD, no postponement fees will be charged for staying the arbitration in order to mediate.

14106. Mediator Selection

(a) A mediator may be selected:

- By the parties from a list supplied by the Director;
- By the parties from a list or other source of their own choosing; or
- By the Director if the parties do not select a mediator after submitting a matter to mediation.

(b) For any mediator assigned or selected from a list provided by NASD, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator.

(c) Any mediator selected or assigned to mediate a matter shall comply with the provisions of NASD Customer Code Rule 12408 or NASD Industry Code Rule 13408, unless, with respect to a mediator selected from a source other than a list provided by NASD, the parties elect to waive such disclosure.

(d) No mediator may serve as an arbitrator of any matter pending in NASD arbitration in which he served as a mediator; nor may the mediator represent any party or participant to the mediation in any subsequent NASD arbitration relating to the subject matter of the mediation.

14107. Limitation on Liability

NASD, its employees, and any mediator named to mediate a matter under the Code shall not be liable for any act or omission in connection with a mediation administered under the Code.

14108. Mediation Ground Rules

(a) The following Ground Rules govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.

(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director.

(c) The mediator shall act as a neutral, impartial, facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter.

(d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter.

(e) The mediator may meet with and communicate separately with each party or the party's representative. The mediator shall notify all other parties of any such separate meetings or other communications.

(f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process.

(g) Mediation is intended to be private and confidential.

(1) The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

[(2) The parties and the mediator agree that, unless all parties and the mediator agree otherwise in writing, the mediator will be disqualified as a witness, consultant, or expert in any pending or future investigation, action, or proceeding related to the subject matter of the mediation (including any investigation, action or proceeding that involves persons not a party to the mediation). The mediator and any documents or information in the mediator's possession will not be subpoenaed in any such investigation, action, or proceeding, and the mediator and parties will oppose any effort to have the mediator or documents subpoenaed.]

[(3)] (2) Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to NASD or any other regulatory authority, documentary or other information that NASD or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

[(4)] (3) The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

14109. Mediation Fees

(a) Filing Fees: Cases Filed Directly in Mediation

Each party to a matter submitted directly to a mediation administered under the Code must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$01-\$25,000	\$ 50	\$150
\$25,000.01-\$100,000	\$150	\$300
Over \$100,000	\$300	\$500

(b) Filing Fees: Cases Initially Filed in Arbitration

When a matter is initially filed in arbitration and subsequently submitted to mediation under the Code, each party must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$01-\$25,000	\$ 0	\$ 0
\$25,000.01-\$100,000	\$100	\$150
Over \$100,000	\$250	\$500

(c) Mediator Fees and Expenses

The parties to a mediation administered under the Code must pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with NASD its proportional share of the anticipated mediator charges and expenses, as determined by the Director, prior to the first mediation session.

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD CODE OF MEDIATION PROCEDURE**

PROPOSED RULE	CURRENT RULE
14100. Definitions (a) Board The term “Board” means the Board of Directors of NASD Dispute Resolution, Inc. (b) Code The term “Code” means the NASD Code of Mediation Procedure. (c) Director The term “Director of Mediation” refers to the Director of Mediation at NASD Dispute Resolution. Unless the Code or any other NASD rule provides otherwise, the term includes NASD staff to whom the Director has delegated authority. (d) Matter The term “matter” means a dispute, claim, or controversy. (e) NAMC The term “NAMC” means the National Arbitration and Mediation Committee of the Board of Directors of NASD Dispute Resolution, Inc. (f) NASD Unless the Code specifies otherwise, the term “NASD”	New Rule

PROPOSED RULE	CURRENT RULE
includes NASD, Inc., and NASD Dispute Resolution, Inc. (g) NASD Customer Code The term “NASD Customer Code” means the NASD Code of Arbitration Procedure for Customer Disputes (h) NASD Industry Code The term “NASD Industry Code” means the NASD Code of Arbitration Procedure for Industry Disputes (i) Submission Agreement The term “Submission Agreement” means the NASD Mediation Submission Agreement. The NASD Mediation Submission Agreement is a document that parties must sign at the outset of a mediation in which they agree to submit to mediation under the Code.	
14101. Applicability of Code The Code applies to any matter submitted to mediation at NASD.	10401. Scope and Authority (a) The NASD Mediation Procedures ("Procedures") set forth in this Rule 10400 Series shall apply to the mediation of any dispute, claim or controversy ("matter") administered by the Association.
14102. National Arbitration and Mediation Committee (a) The Board shall appoint a National Arbitration and Mediation Committee ("NAMC"). (1) The NAMC shall consist of no fewer than ten and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members. (2) The Chairperson of the Board shall name the	10401. Scope and Authority (b) A Director of Mediation shall be designated by the NASD Dispute Resolution Board to administer mediations under these Procedures. The Director will consult the National Arbitration and Mediation Committee on the administration of mediations and the Committee shall, as necessary, make recommendations to the Director of Arbitration and recommend to the NASD Dispute Resolution

PROPOSED RULE	CURRENT RULE
Chairperson of the NAMC. (b) The NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. All matters recommended by the NAMC to the Board must have been approved by a majority of the NAMC members present and voting. The NAMC has such other power and authority as is necessary to carry out the purposes of this Code. (c) The NAMC may meet as frequently as necessary, but must meet at least once a year.	Board amendments to the Procedures. The duties and functions of the Director may be delegated by the Director, as appropriate. For purposes of this Rule 10400 Series, the term "Director" refers to the Director of Mediation.
14103. Director of Mediation (a) The Board shall appoint a Director of Mediation to administer mediations under the Code. The Director will consult with the NAMC on the administration of mediations, as necessary. (b) The Director may delegate his or her duties when appropriate, unless the Code provides otherwise.	10401. Scope and Authority (b) A Director of Mediation shall be designated by the NASD Dispute Resolution Board to administer mediations under these Procedures. The Director will consult the National Arbitration and Mediation Committee on the administration of mediations and the Committee shall, as necessary, make recommendations to the Director of Arbitration and recommend to the NASD Dispute Resolution Board amendments to the Procedures. The duties and functions of the Director may be delegated by the Director, as appropriate. For purposes of this Rule 10400 Series, the term "Director" refers to the Director of Mediation.
14104. Mediation Under the Code (a) Mediation under the Code is voluntary, and requires the written agreement of all parties. No party may be compelled to participate in a mediation or to settle a matter by NASD, or any mediator appointed to mediate a matter pursuant to the Code.	10401. Scope and Authority (c) Neither the Association nor any mediator appointed to mediate a matter pursuant to these Procedures shall have any authority to compel a party to participate in a mediation or to settle a matter.

PROPOSED RULE	CURRENT RULE
(b) If all parties agree, any matter that is eligible for arbitration under the NASD Customer Code or NASD Industry Code, or any part of any such matter, or any dispute related to such matter, including procedural issues, may be submitted for mediation under the Code. (c). A matter is submitted to mediation when the Director receives an executed Submission Agreement from each party (d) The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.	10402. Submission of Eligible Matters Any matter eligible for arbitration under this Code, any part thereof, or any issue related to the matter, including procedural issues, may be submitted for mediation under these Procedures upon the agreement of all parties. A matter will be deemed submitted when the Director has received an executed Submission Agreement from each party. The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.
14105. Effect of Mediation on Arbitration Proceedings (a) Unless the parties agree otherwise, the submission of a matter for mediation will not stay or otherwise delay the arbitration of a matter pending at NASD. If all parties agree to stay an arbitration in order to mediate the matter, the arbitration will be stayed, notwithstanding any provision to the contrary in this Code or any other NASD rule. (b) If mediation is conducted through NASD, no postponement fees will be charged for staying the arbitration in order to mediate.	10403. Arbitration Proceedings (a) Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code. When all parties agree to stay the arbitration in order to mediate the claim, the arbitration proceeding shall be stayed, notwithstanding any provision to the contrary in this Code. (b) If mediation is conducted through NASD Dispute Resolution, Inc., no adjournment fees will be charged for staying the arbitration proceeding in order to mediate.
14106. Mediator Selection (a) A mediator may be selected: • By the parties from a list supplied by the Director; • By the parties from a list or other source of their own choosing; or	10404. Mediator Selection (a) A mediator may be selected: (1) by the parties from a list supplied by the Director; (2) by the parties from a list or other source of their own choosing; or (3) by the Director if the parties do not act to select a mediator after submitting a matter to mediation. (b) With respect to any mediator assigned or selected from

PROPOSED RULE	CURRENT RULE
• By the Director if the parties do not select a mediator after submitting a matter to mediation. (b) For any mediator assigned or selected from a list provided by NASD, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. (c) Any mediator selected or assigned to mediate a matter shall comply with the provisions of NASD Customer Code Rule 12408 or NASD Industry Code Rule 13408, unless, with respect to a mediator selected from a source other than a list provided by NASD, the parties elect to waive such disclosure. (d) No mediator may serve as an arbitrator of any matter pending in NASD arbitration in which he served as a mediator; nor may the mediator represent any party or participant to the mediation in any subsequent NASD arbitration relating to the subject matter of the mediation.	a list provided by the Association, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Any mediator selected or assigned to mediate a matter shall comply with the provisions of Rule 10312(a), (b) and (c), unless, with respect to a mediator selected from a source other than the Association's lists, the parties elect to waive such disclosure. (c) No mediator shall be permitted to serve as an arbitrator of any matter pending in Association arbitration in which he served as a mediator, nor shall the mediator be permitted to represent any party or participant to the mediation in any subsequent Association arbitration proceeding relating to the subject matter of the mediation.
14107. Limitation on Liability NASD, its employees, and any mediator named to mediate a matter under the Code shall not be liable for any act or omission in connection with a mediation administered under the Code.	10405. Limitation on Liability The Association, its employees, and any mediator named to mediate a matter under this Rule 10400 Series, shall not be liable for any act or omission in connection with a mediation administered pursuant to these Procedures.
14108. Mediation Ground Rules (a) The following Ground Rules govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.	10406. Mediation Ground Rules (a) The following Ground Rules are established to govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.

PROPOSED RULE	CURRENT RULE
(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director. (c) The mediator shall act as a neutral, impartial, facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter. (d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter. (e) The mediator may meet with and communicate separately with each party or the party's representative. The mediator shall notify all other parties of any such separate meetings or other communications. (f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process. (g) Mediation is intended to be private and confidential.	(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director. (c) The mediator shall act as a neutral, impartial, facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter. (d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter. (e) The mediator may meet with and communicate separately with each party or their representative. The mediator shall notify all other parties of any such separate meetings or other communications. (f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process. (g) (1) Mediation is intended to be private and

PROPOSED RULE	CURRENT RULE
(1) The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential. [(2) The parties and the mediator agree that, unless all parties and the mediator agree otherwise in writing, the mediator will be disqualified as a witness, consultant, or expert in any pending or future investigation, action, or proceeding related to the subject matter of the mediation (including any investigation, action or proceeding that involves persons not a party to the mediation). The mediator and any documents or information in the mediator's possession will not be subpoenaed in any such investigation, action, or proceeding, and the mediator and parties will oppose any effort to have the mediator or documents subpoenaed.] [(3)] <u>(2)</u> Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to NASD or any other regulatory authority, documentary or other information that NASD or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities. [(4)] <u>(3)</u> The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party	confidential. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential. (2) Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to the Association or any other regulatory authority, documentary or other information that the Association or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities. (3) The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

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14109. Mediation Fees (a) Filing Fees: Cases Filed Directly in Mediation Each party to a matter submitted directly to a mediation administered under the Code must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director. <table><tr><th>Amount in Controversy</th><th>Customer and Associated Person Fee</th><th>Member Fee</th></tr><tr><td>\$.01-\$25,000</td><td>\$ 50</td><td>\$150</td></tr><tr><td>\$25,000.01-\$100,000</td><td>\$150</td><td>\$300</td></tr><tr><td>Over \$100,000</td><td>\$300</td><td>\$500</td></tr></table> (b) Filing Fees: Cases Initially Filed in Arbitration When a matter is initially filed in arbitration and subsequently submitted to mediation under the Code, each party must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director. <table><tr><th>Amount in Controversy</th><th>Customer and Associated Person Fee</th><th>Member Fee</th></tr><tr><td>\$.01-\$25,000</td><td>\$ 0</td><td>\$ 0</td></tr><tr><td>\$25,000.01-\$100,000</td><td>\$100</td><td>\$150</td></tr><tr><td>Over \$100,000</td><td>\$250</td><td>\$500</td></tr></table> (c) Mediator Fees and Expenses The parties to a mediation administered under the Code must pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be	Amount in Controversy	Customer and Associated Person Fee	Member Fee	\$.01-\$25,000	\$ 50	\$150	\$25,000.01-\$100,000	\$150	\$300	Over \$100,000	\$300	\$500	Amount in Controversy	Customer and Associated Person Fee	Member Fee	\$.01-\$25,000	\$ 0	\$ 0	\$25,000.01-\$100,000	\$100	\$150	Over \$100,000	\$250	\$500	10407. Mediation Fees (a) Filing Fees: Cases Filed Directly in Mediation Each party to a matter submitted directly to a mediation administered by the Association shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation. <table><tr><th>Amount in controversy</th><th>Customer and Associated Person Fee</th><th>Member Fee</th><th>Total Fee</th></tr><tr><td>\$.01-\$25,000</td><td>\$50</td><td>\$150</td><td>\$200</td></tr><tr><td>\$25,000.01-\$1000,000</td><td>\$150</td><td>\$300</td><td>\$450</td></tr><tr><td>Over \$100,000</td><td>\$300</td><td>\$500</td><td>\$800</td></tr></table> (b) Filing Fees: Cases Initially Filed in Arbitration When a matter is initially filed in arbitration and subsequently submitted to a mediation administered by the Association, each party shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation. <table><tr><th>Amount in controversy</th><th>Customer and Associated Person Fee</th><th>Member Fee</th><th>Total Fee</th></tr><tr><td>\$.01-\$25,000</td><td>\$0</td><td>\$0</td><td>\$0</td></tr><tr><td>\$25,000.01-\$1000,000</td><td>\$100</td><td>\$150</td><td>\$250</td></tr><tr><td>Over \$100,000</td><td>\$250</td><td>\$500</td><td>\$750</td></tr></table> (c) Mediator Fees and Expenses	Amount in controversy	Customer and Associated Person Fee	Member Fee	Total Fee	\$.01-\$25,000	\$50	\$150	\$200	\$25,000.01-\$1000,000	\$150	\$300	\$450	Over \$100,000	\$300	\$500	\$800	Amount in controversy	Customer and Associated Person Fee	Member Fee	Total Fee	\$.01-\$25,000	\$0	\$0	\$0	\$25,000.01-\$1000,000	\$100	\$150	\$250	Over \$100,000	\$250	\$500	\$750
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PROPOSED RULE	CURRENT RULE
specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with NASD its proportional share of the anticipated mediator charges and expenses, as determined by the Director, prior to the first mediation session.	The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association its proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session.

NASD CODE OF MEDIATION PROCEDURE

14100. Definitions

(a) Board

The term “Board” means the Board of Directors of NASD Dispute Resolution, Inc.

(b) Code

The term “Code” means the NASD Code of Mediation Procedure.

(c) Director

The term “Director of Mediation” refers to the Director of Mediation at NASD Dispute Resolution. Unless the Code or any other NASD rule provides otherwise, the term includes NASD staff to whom the Director has delegated authority.

(d) Matter

The term “matter” means a dispute, claim, or controversy.

(e) NAMC

The term “NAMC” means the National Arbitration and Mediation Committee of the Board of Directors of NASD Dispute Resolution, Inc.

(f) NASD

Unless the Code specifies otherwise, the term “NASD” includes NASD, Inc., and NASD Dispute Resolution, Inc.

(g) NASD Customer Code

The term “NASD Customer Code” means the NASD Code of Arbitration Procedure for Customer Disputes

(h) NASD Industry Code

The term “NASD Industry Code” means the NASD Code of Arbitration Procedure for Industry Disputes

(i) Submission Agreement

The term “Submission Agreement” means the NASD Mediation Submission Agreement. The NASD Mediation Submission Agreement is a document that parties must sign at the outset of a mediation in which they agree to submit to mediation under the Code.

14101. Applicability of Code

The Code applies to any matter submitted to mediation at NASD.

14102. National Arbitration and Mediation Committee

(a) The Board shall appoint a National Arbitration and Mediation Committee ("NAMC").

(1) The NAMC shall consist of no fewer than ten and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the Chairperson of the NAMC.

(b) The NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. All matters recommended by the NAMC to the Board must have been approved by a majority of the NAMC members present and voting. The NAMC has such other power and authority as is necessary to carry out the purposes of this Code.

(c) The NAMC may meet as frequently as necessary, but must meet at least once a year.

14103. Director of Mediation

(a) The Board shall appoint a Director of Mediation to administer mediations under the Code. The Director will consult with the NAMC on the administration of mediations, as necessary.

(b) The Director may delegate his or her duties when appropriate, unless the Code provides otherwise.

14104. Mediation Under the Code

(a) Mediation under the Code is voluntary, and requires the written agreement of all parties. No party may be compelled to participate in a mediation or to settle a matter by NASD, or any mediator appointed to mediate a matter pursuant to the Code.

(b) If all parties agree, any matter that is eligible for arbitration under the NASD Customer Code or NASD Industry Code, or any part of any such matter, or any dispute related to such matter, including procedural issues, may be submitted for mediation under the Code.

(c) A matter is submitted to mediation when the Director receives an executed Submission Agreement from each party

(d) The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.

14105. Effect of Mediation on Arbitration Proceedings

(a) Unless the parties agree otherwise, the submission of a matter for mediation will not stay or otherwise delay the arbitration of a matter pending at NASD. If all parties agree to stay an arbitration in order to mediate the matter, the arbitration will be stayed, notwithstanding any provision to the contrary in this Code or any other NASD rule.

(b) If mediation is conducted through NASD, no postponement fees will be charged for staying the arbitration in order to mediate.

14106. Mediator Selection

(a) A mediator may be selected:

- By the parties from a list supplied by the Director;
- By the parties from a list or other source of their own choosing; or
- By the Director if the parties do not select a mediator after submitting a matter to mediation.

(b) For any mediator assigned or selected from a list provided by NASD, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator.

(c) Any mediator selected or assigned to mediate a matter shall comply with the provisions of NASD Customer Code Rule 12408 or NASD Industry Code Rule 13408, unless, with respect to a mediator selected from a source other than a list provided by NASD, the parties elect to waive such disclosure.

(d) No mediator may serve as an arbitrator of any matter pending in NASD arbitration in which he served as a mediator; nor may the mediator represent any party or participant to the mediation in any subsequent NASD arbitration relating to the subject matter of the mediation.

14107. Limitation on Liability

NASD, its employees, and any mediator named to mediate a matter under the Code shall not be liable for any act or omission in connection with a mediation administered under the Code.

14108. Mediation Ground Rules

(a) The following Ground Rules govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.

(b) Mediation is voluntary and any party may withdraw from mediation at any time prior to the execution of a written settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director.

(c) The mediator shall act as a neutral, impartial, facilitator of the mediation process and shall not have any authority to determine issues, make decisions or otherwise resolve the matter.

(d) Following the selection of a mediator, the mediator, all parties and their representatives will meet in person or by conference call for all mediation sessions, as determined by the mediator or by mutual agreement of the parties. The mediator shall facilitate, through joint sessions, caucuses and/or other means, discussions between the parties, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall determine the procedure for the conduct of the mediation. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter.

(e) The mediator may meet with and communicate separately with each party or the party's representative. The mediator shall notify all other parties of any such separate meetings or other communications.

(f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation. Notwithstanding that a matter is being mediated, the parties may engage in direct settlement discussions and negotiations separate from the mediation process.

(g) Mediation is intended to be private and confidential.

(1) The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

(2) Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to NASD or any other regulatory authority, documentary or other information that NASD or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

(3) The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

14109. Mediation Fees

(a) Filing Fees: Cases Filed Directly in Mediation

Each party to a matter submitted directly to a mediation administered under the Code must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$.01-\$25,000	\$ 50	\$150
\$25,000.01-\$100,000	\$150	\$300
Over \$100,000	\$300	\$500

(b) Filing Fees: Cases Initially Filed in Arbitration

When a matter is initially filed in arbitration and subsequently submitted to mediation under the Code, each party must pay an administrative fee to NASD in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$.01-\$25,000	\$ 0	\$ 0
\$25,000.01-\$100,000	\$100	\$150
Over \$100,000	\$250	\$500

(c) Mediator Fees and Expenses

The parties to a mediation administered under the Code must pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with NASD its proportional share of the anticipated mediator charges and expenses, as determined by the Director, prior to the first mediation session.