

OMB APPROVAL

OMB Number: 3235-0045
Expires: June 30, 2007
Estimated average burden
hours per response.....38

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

File No. SR - 2003 - 158
Amendment No. 3

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
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Exhibit 3 Sent As Paper Document
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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 Assistant Chief Counsel, NASD Dispute Resolution
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 04/08/2005

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

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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

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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

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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 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 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

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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 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 Code in its entirety. NASD is also proposing to make certain substantive amendments to the Code as described herein. This rule filing contains the proposed Customer Code, the text of which is attached as an exhibit.¹ Also, a chart comparing the current Code and the proposed Customer Code is attached as an exhibit.² An old-to-new conversion guide will be posted on the Web site at www.nasd.com.

(b) The proposed rule change will require amendments to the NASD Discovery Guide and Document Production Lists (“Discovery Guide”). As described below, much of the substance of the current Discovery Guide has been included in the

¹ The Industry Code and the Mediation Code have been filed separately with the Commission as SR-NASD-2004-011 and SR-NASD-2004-013, respectively.

² For purposes of this filing, the version of the current and proposed Codes used in the comparison and conversion charts reflects all Dispute Resolution rule filings approved by the Commission since the proposed rule change was filed on October 15, 2003.

proposed Customer Code (see proposed Rules 12505-12511). Therefore, the Discovery Guide has been amended to retain only the information, including the Document Production Lists, not incorporated into the proposed Customer Code. The text of the proposed amendments to the Discovery Guide is attached as an exhibit.

(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 April 23, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD 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 April 24, 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.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the Notice to Members announcing Commission approval. Once approved, the Customer Code will apply to claims filed on or after the effective date.

(b) Questions regarding this rule filing may be directed to Mignon McLemore, Assistant Chief 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

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. Because the Code is used by investors, including investors who appear pro se in the NASD forum, NASD undertook to rewrite the current Code in “plain English.” Over time, the goals of the plain English initiative expanded beyond simplifying the language and sentence structure of the rules in the Code to include:

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

Plain English

When it launched its “plain English” initiative in 1998, the SEC published a “Plain English Handbook,” to provide guidance to issuers and SROs in drafting materials intended to be used by investors. The SEC’s Plain English Handbook 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.

In revising the Code, NASD has implemented these guidelines wherever possible. Throughout the proposed Code, NASD has simplified language and eliminated unnecessarily legalistic or arcane terminology. Long rules, such as current Rule 10308, governing arbitrator selection, and current Rule 10321, governing filing and responding

to an arbitration claim, have been broken into several shorter rules. (See proposed Rules 12400-12406, and proposed Rules 12300-12313, respectively.) Where appropriate, lists are presented in bullet point format, and active verbs are used. The proposed Code also contains a new definitions rule (proposed Rule 12100) that defines commonly used terms applicable throughout the Code. In the current Code, some rules, such as Rule 10308, contain definitions applicable to the rule only, but there is not a general definitions rule that applies to the entire Code. NASD believes that a comprehensive definitions rule will make the Code easier to understand and to use, and will help eliminate confusion about the meaning and scope of frequently used terms. It will also allow NASD to use shorter phrases, or single words, in place of longer phrases. For example, the phrase “dispute, claim, or controversy” has been replaced by the word “dispute,” which has been defined in Rule 12100 to mean the longer phrase. This makes rules easier to read and understand, without changing the meaning of the Code.

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. Although many of the rules in the Customer and Industry Codes will be identical, NASD believes that maintaining separate arbitration codes will eliminate confusion regarding which rules are applicable to which disputes. NASD also believes that maintaining a separate Mediation Code will be particularly useful to parties submitting matters 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 code 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. For example, the Customer Code will use the Rule 12000 series, which is currently unused. The Industry Code will use the Rule 13000 series, and the Mediation Code will use the Rule 14000 series, both 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.

To make it easier to find specific rules, the Customer Code will be divided into the following nine parts, which are intended to approximate the chronological order of a typical arbitration:

- Part I (Rule 12100 et seq.) contains definitions, as well as other rules relating to the organization and authority of the forum;
- Part II (Rule 12200 et seq.) contains general arbitration rules, including what claims are subject to arbitration in the NASD forum;

- Part III (Rule 12300 et seq.) 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 (12400 et seq.) contains rules relating to the appointment, authority and removal of arbitrators;
- Part V (Rules 12500 et seq.) contains rules governing the prehearing process, including proposed new rules relating to motions and discovery;
- Part VI (Rules 12600 et seq.) contains rules relating to hearings;
- Part VII (Rules 12700 et seq.) contains rules relating to the dismissal, withdrawal, or settlement of claims;
- Part VIII (Rules 12800 et seq.) contains rules relating to simplified (small cases) arbitrations and default proceedings; and
- Part IX (Rules 12900 et seq.) contains rules relating to fees and awards.

Description of Other Changes

In addition to simplifying and reorganizing the Code, the proposed rule change includes several other changes to the Customer Code that are intended to make the NASD arbitration process as simple, uniform and transparent as possible. Some of the proposed changes codify or clarify current NASD practice. Others are substantive changes that are intended to provide guidance to parties, resolve open questions, or streamline or standardize the administration of NASD arbitrations. Only proposed substantive changes are discussed in detail below. Any proposed changes to the Code that are not discussed are nonsubstantive revisions.

The proposed changes are discussed below, in the order that they appear in the Customer Code.

Agreement of the Parties (Proposed Rule 12105)

Both the current Code and proposed Customer Code permit parties to an

arbitration to agree to modify certain provisions, such as the number of arbitrators on a panel, or the time to respond to a pleading. Occasionally, all active parties to an arbitration agree to modify a provision, but an inactive party does not respond to notices or participate in the decision. Under a literal reading of the current Code, the active parties to the arbitration would not be able to agree to the modification, even though the inactive party was not participating in the arbitration. This can cause unnecessary delay and frustration for the active parties.

NASD believes that the non-appearance of an inactive party should not prevent active parties to an arbitration from exercising control over the arbitration process. To address this concern, proposed Rule 12105 would provide that, when the Code allows the parties to an arbitration to modify a provision of the Code, or a decision of the Director or the panel, the agreement of all named parties is required, unless the Director or panel determines that a party is inactive in the arbitration or has failed to respond after adequate notice has been given.

Use of the Forum (Proposed Rule 12203)

Currently, Rule 10301(b) provides that the Director of Arbitration, upon approval of the National Arbitration and Mediation Committee (“NAMC”) or its Executive Committee, may decline the use of the NASD arbitration forum if the “dispute, claim, or controversy is not a proper subject matter for arbitration.”

Occasionally, situations arise in which the Director believes that it is in the best interest of the forum to deny use of the forum for reasons other than subject matter. For example, the current rule does not specifically permit the Director to deny the forum when NASD has reason to believe that a party would present a security risk to the forum

or to other parties. Furthermore, the requirement that the Director must first obtain approval of either the NAMC, or its Executive Committee, is burdensome and time-consuming, making it difficult for the Director or the forum to respond appropriately in emergency situations.

To address this concern, proposed Rule 12203(a) would provide that the Director may decline to permit the use of the NASD arbitration forum if the Director determines that, given the purposes of NASD and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of parties, arbitrators or NASD staff. In addition, the provision requiring approval of the NAMC or its Executive Committee would be deleted. However, to ensure that the authority to deny the forum could not be delegated by the Director, the rule would provide that only the Director or the President of NASD Dispute Resolution may exercise the Director's authority under the rule. NASD believes that this rule change will give the Director limited, but crucial, flexibility to protect the integrity and the security of the NASD forum.

Shareholder Derivative Actions (Proposed Rule 12205)

Currently, the Code does not specifically address whether shareholder derivative actions may be arbitrated at NASD. Such claims are not eligible for arbitration at NASD because, by definition, they involve corporate governance disputes that do not arise out of or in connection with the business of a member firm or an associated person.

Nonetheless, the question arises from time to time, occasionally after a claimant has filed a statement of claim.

Proposed Rule 12205, which is consistent with New York Stock Exchange Rule 600(e), would clarify that shareholder derivative actions are not eligible for arbitration at NASD. NASD believes that the inclusion of this rule would help avoid confusion, provide guidance to parties, and conserve resources expended when parties seek to arbitrate such matters at NASD.

Extensions of Deadlines (Proposed Rule 12207)

Currently, Rule 10314(b)(5) provides that deadlines established by the Code for filing or serving pleadings may be extended by the Director, or with the consent of the initial claimant. This provision does not provide guidance with respect to the extension of other deadlines established by the Code, or by the panel or Director, and can also cause confusion with respect to responsive pleadings filed by the initial claimant. The current rule also provides that extensions of time for filing an answer are disfavored and will only be granted in extraordinary circumstances.

To eliminate confusion, and to provide more comprehensive guidance regarding when and under what circumstances deadlines may be extended, proposed Rule 12207 would provide that the parties may agree in writing to extend or modify any deadline for serving an answer; returning arbitrator or chairperson lists; responding to motions; or exchanging documents or witness lists. If the parties agree to extend or modify a deadline, the proposed rule would require that they notify the Director of the new deadline in writing. The proposed rule would also provide that the panel may extend or modify any deadline listed above, or any other deadline set by the panel, either on its own initiative or upon motion of a party. Finally, the rule would provide that the Director may (1) modify or extend any deadline or time period set by the Code for good cause, and (2)

modify or extend any deadline set by the panel in extraordinary circumstances. Although good cause is a lower standard than extraordinary circumstances, which refers to unexpected and uncontrollable events such as weather-related or security emergencies, good cause is not a negligible standard. In the context of the proposed rule, the good cause requirement means that extensions of Code deadlines by the Director are generally disfavored, and that the Director must take into account the effect of the extension on all parties before granting such a request.

Ex Parte Communications (Proposed Rule 12210)

Proposed Rule 12210 would prohibit ex parte communications between parties and arbitrators. The proposed rule is based on general ex parte rules applicable in court proceedings, and reflects current NASD practice. The NASD Arbitrators' Manual and NASD arbitrator training materials direct arbitrators to avoid ex parte communications with parties, and arbitrators receive training on how and why to do so. Materials provided to parties also advise parties to avoid ex parte communications with arbitrators. For example, NASD's 'Top Ten' Standards Of Good Practice At Arbitration Hearings (available on NASD's Web site, www.nasd.com), states that participants in NASD arbitrations "should not engage in conversation with arbitrators in the absence of the other party(ies)."

However, the current Code does not address ex parte communications. To provide additional guidance to arbitrators and parties, and to further ensure the integrity of the NASD arbitration process, the revised Code would include proposed Rule 12210 to expressly prohibit ex parte communication between parties and arbitrators.

Sanctions (Proposed Rule 12212)

Currently, Rule 10305(b), governing the dismissal of proceedings, provides that the “arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.” In addition, the NASD Discovery Guide states that “[t]he panel has wide discretion to address noncompliance with discovery orders. For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys’ fees caused by noncompliance.”

Proposed Rule 12212 would codify the sanction options available to arbitrators that are described in the Discovery Guide, and extend them beyond the discovery context to apply to non-compliance with any order of the panel or provision of the Code. The proposed rule would also allow the panel to dismiss a claim under the same conditions as they may currently, although it would use the term “previous” rather than “lesser” sanctions, in order to avoid potential confusion regarding whether a previous sanction was “lesser” or “greater.” NASD believes that this rule change will encourage parties to comply with both the Code and with orders of the panel, and will also clarify the authority of arbitrators to ensure the fair and efficient administration of arbitration proceedings when parties fail to do so.

Hearing Location (Proposed Rule 12213)

NASD currently maintains more than 55 designated hearing locations for NASD arbitrations and mediations. Generally, when a claim is filed in a case involving a customer, NASD selects the hearing location that is closest to where the customer lived at

the time the dispute arose. To make the arbitration process more transparent, proposed Rule 12213 would codify this practice. (The use of the term “generally” reflects that fact that while the default location is the one closest to where the customer lived at the time the dispute arose, the Director does have discretion to select another location that would be more appropriate or less burdensome to the parties given the specific facts of the case. For example, if the customer lived in California at the time the dispute arose, but has since moved to New York, and the firm does business in New York, the Director could select New York as the hearing location.)

The proposed rule would also clarify that before arbitrator lists are sent to the parties under Rule 12403, the parties may agree in writing to a different hearing location other than the one selected by the Director, and that the Director may change the hearing location upon motion of a party. NASD believes that the proposed rule will provide guidance to parties about where their arbitration will take place, which may be particularly helpful to investors who may be considering filing a claim in arbitration.

Time to Answer Counterclaims and Cross Claims (Proposed Rules 12304 and 12305)

Currently, Rule 10314 provides that claimants have only 10 days to answer a counterclaim, but a respondent answering a cross claim has 45 days to file an answer to the cross claim, even if the respondent has already answered the initial claim. This discrepancy can cause delay in the proceedings. NASD believes that parties who have already filed or served a pleading should have the same amount of time to respond to subsequent pleadings. NASD also believes that 10 days is insufficient, while 45 days is too long. NASD believes that 20 calendar days is the appropriate amount of time for parties to respond to both counter and cross claims.

Therefore, proposed Rule 12304 would extend the time that a claimant has to file a response to a counterclaim from 10 to 20 days from receipt of the counterclaim. In addition, proposed Rule 12305 would shorten the time that a respondent has to respond to a cross claim from 45 days to 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim.

Deficient Claims (Proposed Rule 12307)

Under current NASD practice, if a claimant files a deficient, or incomplete, claim, NASD will notify the claimant, and the claimant is given 30 days to correct the deficiency. If the deficiency is not corrected within that time, the claim is dismissed without prejudice. Reasons for deficiencies include failure to include required information in the statement of claim, failure to pay required fees, and failure to properly execute the NASD Uniform Submission Agreement.

NASD's practice with respect to deficiencies is consistent with the Arbitration Procedures published by the Securities Industry Conference on Arbitration ("SICA"). However, the current Code does not expressly address what constitutes a deficiency, or explain the process for identifying and correcting deficiencies. Proposed Rule 12307 would codify NASD's deficiency practice. Specifically, it would provide that the Director will not serve a deficient, or incomplete, claim, and will enumerate the most common types of deficiencies. The proposed rule would also provide that Director will notify the claimant in writing if the claim is deficient. If all deficiencies are not corrected within 30 calendar days from the time the claimant receives notice, the Director will close the case without serving the claim, and will not refund any filing fees or deposits

paid by the claimant. The proposed rule would also make clear that the same standards apply to deficient counterclaims, cross claims and third party claims served directly by parties, and would prohibit arbitrators from considering such claims unless the deficiencies were corrected within the time allowed. NASD believes that including the deficiency standards and practice in the Code will provide useful guidance to parties, and will reduce delay in NASD arbitrations by reducing the number of deficient claims.

Amending Pleadings to Add Parties (Proposed Rule 12309)

Under the current Code, parties may amend their pleadings at any time prior to the appointment of the arbitration panel. After panel appointment, parties must obtain approval of the arbitrators before amending a pleading. If a party is added to an arbitration proceeding before the Director has consolidated the other parties' arbitrator rankings under current Rule 10308, the Director will send the arbitrator lists to the newly-added party, and the newly-added party may participate in the arbitrator selection process. However, if a party amends a pleading to add a new party to the proceeding between the time that the Director consolidates the arbitrator lists and the time the panel is appointed, the newly-added party is not able to participate in the arbitrator selection process, or to object to being added to the arbitration.

To address this issue, which has been the subject of concern among some users of the forum, proposed Rule 12309 would provide that no party may amend a pleading to add a party during the window of time between the date that ranked arbitrator lists are due to the Director and the panel is appointed. Once the panel is appointed, a pleading could not be amended for any reason without approval of the panel. Proposed Rule 12309(c) would also make clear that the party to be added after panel appointment must

be given an opportunity to be heard before the panel may grant the motion to amend. This change will ensure that a party added to an arbitration by amendment either will be able to participate in the arbitrator selection process, or will have the opportunity to object to being added to the proceeding.

Time to Answer Amended Pleadings (Proposed Rule 12310)

Currently, Rule 10328 provides that parties have 10 business days to answer an amended pleading. Other rules in the current Code refer to calendar days. In the interest of uniformity, proposed Rule 12100(h) defines the term “day” to mean calendar day. To reflect this definition, proposed Rule 12310 would give parties 20 calendar days, rather than 10 business days, to respond to amended pleadings. Although this represents a slight extension of time, it is consistent with the time to respond to counterclaims and cross claims under proposed Rules 12304 and 12305. Because standardizing time frames is part of NASD’s plain English initiative, NASD believes that 20 calendar days is an appropriate time period for responding to amended pleadings.

Rules Governing Number, Selection and Appointment of Arbitrators

The revised Code contains several amendments to the rules governing the number, selection and appointment of arbitrators.

Number of Arbitrators

Under current Rule 10308(b), if the amount of a claim is \$25,000 or less, the arbitration panel consists of one public arbitrator, unless that arbitrator requests a three-arbitrator panel. If the claim is more than \$25,000 but not more than \$50,000, the panel consists of one public arbitrator unless either the single arbitrator, or any party in its

initial pleading, requests a three-arbitrator panel. Claims of more than \$50,000 are heard by a three-arbitrator panel.

To streamline the administration of smaller claims, and minimize the cost of pursuing small claims, proposed Rule 12401 would eliminate the ability of the single arbitrator to request a three-arbitrator panel for any claim of \$50,000 or less. Parties in cases involving more than \$25,000, but not more than \$50,000, could still request a three-arbitrator panel.

Chairperson Lists

Currently, NASD maintains a roster of public and non-public arbitrators. Depending on the amount in dispute, an arbitration panel in a customer dispute will consist either of one public arbitrator, or two public arbitrators and one non-public arbitrator. Parties in three-arbitrator cases receive two lists: one of non-public arbitrators and one of public arbitrators. The lists are generated by the Neutral List Selection System (“NLSS”), NASD’s computerized system for generating lists of arbitrators from NASD’s rosters of arbitrators for the selected hearing location. By a process of striking and ranking the listed arbitrators, the parties select one non-public and two public arbitrators from the lists generated by NLSS. Once the panel is appointed, the parties jointly select the chairperson from the panel, or, if the parties do not agree, the Director appoints the highest-ranked public arbitrator on the panel to serve as chairperson.³

Although NASD provides voluntary chairperson training to its arbitrators, arbitrators who serve as chairperson are not currently required to have chairperson training, to have any particular experience, or to meet any other specific criteria beyond

³ NASD estimates that parties agree on a chairperson only about 20% of the time.

the requirements for serving as an arbitrator. Over the years, one of the most frequent suggestions for improving the quality and efficiency of NASD arbitrations is to ensure that chairpersons, who play a vital role in the administration of cases, have some degree of arbitrator experience and training.

NASD agrees that requiring trained and experienced chairpersons would significantly enhance the quality of its arbitration forum. However, NASD also believes that the criteria or training requirements should not prevent public arbitrators of any professional or educational background from qualifying to serve as chairpersons of panels in customer cases.

To address these concerns, the proposed Customer Code would require that NASD create and maintain a third roster of public arbitrators who are qualified to serve as chairpersons. In three-arbitrator cases, parties would receive three lists of arbitrators: a non-public list, a public list and a public chair-qualified list. The parties would select the chairperson from the chair-qualified list in the same manner and at the same time that they select the other members of the panel. In single-arbitrator cases, the arbitrator would be selected from a list of public chair-qualified arbitrators, unless the parties agreed otherwise.

Under proposed Rule 12400, public arbitrators would be eligible for the chairperson roster if they have completed chairperson training provided by NASD, or have substantially equivalent training or experience, and either:

- Have a law degree and are 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 (“SRO”) in which hearings were held; or

- Have served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.

Substantially equivalent training or experience would include service as a judge or administrative hearing officer, chairperson training offered by another recognized dispute resolution forum, or the like. Decisions regarding whether particular training or experience other than NASD chairperson training would qualify under this provision would be in the sole discretion of the Director. NASD believes that these criteria strike the appropriate balance between ensuring that arbitrators who serve as chairpersons or single arbitrators have the requisite experience to fairly and efficiently administer their cases, and allowing arbitrators of all professional backgrounds to qualify as chairpersons. Public arbitrators who qualify under these criteria will be placed on the chairperson roster only if they agree to serve as chairpersons; otherwise, they will remain on the general public arbitrator roster. To avoid duplication of names on the lists sent to parties, arbitrators who are on the chairperson roster will not be on the general public arbitrator roster.

NLSS Changes

The proposed Code would implement several changes to the operation of NLSS. NLSS would generate arbitrator names from the NASD rosters on a random, rather than rotational, basis. This change is primarily driven by computer programming requirements. NASD is currently developing a new computerized case-management system. This change would make the anticipated upgrades to the NLSS component of the new case management system significantly simpler and less expensive to program and implement.

In addition, the proposed Code would eliminate the ability of parties to unilaterally request arbitrators with particular expertise, a practice that is an ongoing source of controversy, as well as burdensome for the NASD staff to administer.

Finally, proposed Rule 12403 would expand the number of names of proposed arbitrators provided to the parties to seven, but would limit the number of arbitrators that each party may strike from each list to five. NASD believes that expanding the lists, but limiting the number of strikes each party may exercise, will expedite panel appointment and minimize the likelihood that the Director will have to appoint an arbitrator who was not on the original lists sent to parties. Currently, parties are allowed unlimited strikes, which often results in no arbitrators being left on the consolidated list. In such cases, the administration of the arbitration is delayed, and the Director must appoint arbitrators to fill the panel.

Collectively, NASD believes that these modifications to NLSS would streamline and simplify the arbitrator selection process and enhance the quality of NASD arbitrations.

Appointment of Arbitrators (Proposed Rule 12406)

In the past, questions have occasionally arisen regarding when appointment of arbitrators occurs. To address these questions, paragraph (d) of proposed Rule 12406 would clarify that appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. In addition, as part of the chronological reorganization of the Code, the arbitrator oath requirement that is currently in Rule 10327 has been included in proposed Rule 12406.

Arbitrator Recusal (Proposed Rule 12409)

Under current NASD practice, parties may request that an arbitrator recuse himself or herself from the panel at any time. However, the current Code does not address arbitrator recusal. To provide guidance to parties, proposed Rule 12409 would provide that any party may ask an arbitrator to recuse himself or herself from the panel for good cause. The proposed rule would also clarify that requests for arbitrator recusal are decided by the arbitrator who is the subject of the request. Some users of the forum believe that recusal requests should be made to the full panel. Courts have held, however, that recusal decisions are within the discretion of the panel, and therefore, tend to uphold these decisions on appeal.⁴ However, the Director may remove arbitrators for cause under proposed Rule 12410 on the same grounds applicable in current Rules 10308(d), 10312(d) and 10313.

Replacement of Arbitrators (Proposed Rule 12411)

Under the current Code, the provisions regarding replacement of arbitrators are contained in Rules 10308(d)(3) and 10313, which contain numerous cross-references to other rules. Proposed Rule 12411 would consolidate the various current rules. The proposed rule would also extend the option of electing to proceed with only the remaining arbitrators to all stages of the proceeding, and eliminate the 5-day limit on electing that option contained in current Rule 10313. NASD believes that parties should have the right to decide jointly to proceed with only the remaining arbitrators regardless

⁴See ANR Coal Company, Incorporated v. Cogentrix of North Carolina, Incorporated, 173 F.3d 493, 499-502 (4th Cir. 1999); Consolidated Coal Company v. Local 1643, United Mine Workers of America; District 17, United Mine Workers of America, 48 F.3d 125, 127-130 (4th Cir. 1995); Andrew Jason, et al. v. Halliburton Company, 2002 U.S. Dist. LEXIS 19706, 10-16 (E.D. La. 2002); and Jeerreddi A. Prasad, M.D., Inc., Retirement Plan Trust Profit Sharing Plan and Jeerreddi A. Prasad, M.D. v. Investors Associates, Incorporated, Herman Epstein, and Lawrence Joseph Penna, 82 F. Supp. 2d 365, 370 n.9 (D. N.J. 2000).

of when the replacement occurs, and that the parties should be able to elect that option up until the time the appointment of the replacement arbitrator occurs. Otherwise, proposed Rule 12411 does not contain any substantive changes from the current rules upon which it is based.

Determinations of Arbitration Panel (Proposed Rule 12414)

The proposed rule reflects that under the Code, and applicable law, some decisions of the panel may be made by a single member of a three-arbitrator panel. For example, Rule 12503 provides that some motions may be decided by a single arbitrator. Also, under Rule 12512, applicable law may permit a single arbitrator to issue a subpoena.

Initial Prehearing Conferences (Proposed Rule 12500)

Proposed Rule 12500 would codify the portion of the NASD Discovery Guide relating to initial prehearing conferences (“IPHCs”). Since the adoption of the Discovery Guide in 1999, IPHCs have been standard practice in NASD arbitrations. The IPHC gives the panel and the parties an opportunity to organize the management of the case, set a discovery cut-off date, identify and establish a schedule for potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve many other preliminary issues. Users of the forum have found the IPHC to be a valuable tool in managing the administration of arbitrations. NASD believes that the proposed rule, which provides that an IPHC will be held in every case unless the parties jointly agree on certain scheduling and other enumerated issues in advance, will provide valuable guidance to parties and arbitrators about the role of IPHCs in NASD arbitrations.

Recording Prehearing Conferences (Proposed Rule 12502)

Currently the Code is silent with respect to whether and under what circumstances a prehearing conference will be tape-recorded. Proposed Rule 12502 would provide that prehearing conferences are generally not tape-recorded as a matter of course (with the exception of prehearing conferences to decide dispositive motions, discussed below). However, the rule would permit the panel to decide to tape-record a prehearing conference on its own initiative, or at the request of a party. The rule would also provide that, if the prehearing conference is tape-recorded, the Director will provide a copy of the tape to any party upon request, for a nominal fee. The rule does not specify the fee, because the fee may vary slightly depending on the rates charged by NASD's telephone service provider, which normally makes the initial recording of telephonic hearing sessions. The current fee is \$15 per tape. (Because NASD must arrange in advance to have telephonic hearing sessions taped, NASD will instruct arbitrators that they should notify NASD at least 24 hours in advance when they have decided that a prehearing conference should be taped.)

Motions (Proposed Rule 12503)

Although motions are increasingly common in arbitration, the current Code does not refer to motions or provide any guidance with respect to motions practice. As a result, motions practice lacks uniformity, and parties and arbitrators alike are often unsure how motions should be made, responded to or decided. To provide guidance to parties and arbitrators, and to standardize motions practice in the NASD forum, proposed Rule 12503 would establish procedures and deadlines for making, responding to and deciding motions.

Some users of the forum have expressed the concern that adopting a motions practice rule will encourage more motions. Although NASD understands this concern, NASD believes that motions have already become an inescapable part of most arbitrations. Therefore, NASD believes that the Code should provide as much guidance about motions as possible to parties, particularly infrequent users of the forum. However, in an effort to deter unnecessary motions, the rule would require that, before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. The rule would also require that every motion, whether written or oral, include a description of the efforts made by the moving party to resolve the matter before making the motion.

Another common concern about adopting a motions practice rule is that it will detract from the informal nature of arbitration. To address this concern, the rule would make clear that most motions may be made either orally or in writing, and that written motions need not take any particular form.

Paragraph (c) of the proposed rule would outline who decides what motions. For example, paragraph (c)(1) provides that motions relating to the use of the forum under proposed Rule 12203 and removal of an arbitrator under proposed Rule 12410 are decided by the Director, because these motions are filed and decided before a panel has been appointed. Paragraph (c)(2) would provide that motions relating to combining or separating claims or arbitrations, or changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed. Paragraph (c)(3) provides that discovery-related motions are decided by one arbitrator, generally the chairperson. This provision reflects that while the chairperson is usually the

person to decide such motions, the chairperson may not always be available, and the parties or the Director may decide to refer the matter to one of the other arbitrators. The provision also states that the arbitrator who initially hears a discovery-related motion may refer such motions to the full panel, either at his or her own initiative or at the request of a party. The arbitrator must refer motions relating to issues of privilege to the full panel at the request of a party. Paragraph (c)(4) provides that motions relating to arbitrator recusal are decided by the arbitrator who is the subject of the motion, as provided by proposed Rule 12409. Finally, the rule provides that all other motions not covered in the preceding paragraphs of the rule are decided by the full panel, unless the Code provides or the parties agree otherwise.

Dispositive Motions (Proposed Rule 12504)

Another recurring question in NASD arbitrations is whether, and to what extent, arbitrators have the authority to decide dispositive motions before a hearing on the merits. In its Follow-up Report on Matters Relating to Securities Arbitration, the General Accounting Office (“GAO”) noted that while NASD’s arbitration rules do not specifically provide for dispositive motions, case law generally supports the authority of arbitrators to grant motions to dismiss claims prior to the hearing on the merits.⁵ Because the Code provides no guidance with respect to this question, arbitrator decisions with respect to it lack uniformity.

Generally, NASD believes that parties have the right to a hearing in arbitration. However, NASD also acknowledges that in certain extraordinary circumstances, it would

⁵ U.S. General Accounting Office, Follow-up Report on Matters Relating to Securities Arbitration (April 11, 2003).

be unfair to require a party to proceed to a hearing. Specifically, the proposed rule would:

- Provide that, except for motions relating to the eligibility of claims under the Code's six year time limit, motions that would resolve a claim before a hearing on the merits are discouraged, and may only be granted in extraordinary circumstances;
- Require that a prehearing conference before the full panel must be held to discuss the motion before the panel could grant it; and
- Allow the panel to issue sanctions against a party for making a dispositive motion in bad faith.

NASD believes that this rule proposal, which was developed over several years with input from industry and public members of the NAMC, will provide necessary guidance to parties and arbitrators, and make the administration of arbitrations more uniform and transparent. NASD believes that the rule strikes the appropriate balance between allowing the dismissal of claims in limited, extraordinary circumstances and reinforcing the general principle that parties are entitled to a hearing in arbitration.

Discovery (Proposed Rules 12505 – 12511)

One of the most frequent comments made by users of the NASD forum is that the discovery procedures outlined in NASD's Discovery Guide are routinely ignored, resulting in significant delay and the frequent need for arbitrator intervention in the discovery process. This is partly due to the fact that the Discovery Guide establishes guidelines rather than mandatory procedures.

To address these concerns, proposed Rules 12505-12511 would codify the discovery procedures currently outlined in the NASD Discovery Guide, with certain substantive changes. The proposed Code would not contain the actual Document Production Lists, which would remain in the Discovery Guide, but it would make clear

that producing or objecting to documents on applicable lists, as well as other documents requested by parties, is mandatory. The proposed rules would extend the time parties have to respond to Document Production Lists and other discovery requests from 30 to 60 days, but would also provide more serious consequences when parties fail to respond, or when parties frivolously object to production of documents or information. In addition, proposed Rule 12512 would codify the sanctions provisions of the Discovery Guide, clarifying the authority of arbitrators to punish parties for non-compliance with discovery rules or orders of the panel. NASD believes that, collectively, these changes will significantly minimize the number of discovery disputes in NASD arbitrations.

Because much of what is currently contained in the Discovery Guide would not be incorporated into the Code, the Discovery Guide would be amended to include only the remaining information, including the Document Production Lists themselves.

Subpoenas (Proposed Rule 12512)

Current Rule 10322 provides that the arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law, and that all parties must be given a copy of a subpoena upon its issuance. The rule also provides that parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

Proposed Rule 12512 is substantially identical to the current rule Code, but would also require that if a subpoena is issued, the issuing party must send copies to all other parties at the same time and in the same manner as the party that issued the subpoena. This modification is intended to ensure that parties receive notice of the subpoena in a timely manner.

Exchange of Documents and Witness Lists (Proposed Rule 12514)

Current Rule 10321(d) requires that at least 20 days before a hearing on the merits is scheduled to begin, all parties must exchange copies of all documents in their possession that they intend to present at the hearing, and must identify all witnesses they intend to present at the hearing. As a practical matter, many of the documents will already have been exchanged through discovery. Users of the forum have advised NASD that this rule would be less burdensome, and more useful, if it were amended to require only that parties exchange all documents they intend to use at the hearing that have not previously been exchanged. The proposed rule would also increase the consequences of failing to comply with this requirement. Under the current rule, the panel may exclude evidence not exchanged in a timely manner. Proposed Rule 12514 would create a presumption that parties could not use any documents at the hearing that were not exchanged, or call any witnesses at the hearing who were not identified, within the time provided by the rule, unless the panel determines that good cause exists. The proposed rule specifically provides that good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments at the hearing.

Postponements (Proposed Rule 12601)

In the proposed Code, hearing adjournments are referred to as hearing postponements, for plain English purposes. Paragraph (a) of proposed Rule 12601 has been amended to provide that the panel may not grant requests to postpone a hearing that are made within 10 days of a scheduled hearing session unless the panel determines that good cause exists. This provision is intended to reduce the number of last minute

requests for postponements, a practice that many users of the forum believe results in unnecessary delay and unfairness to parties.

In paragraph (b) of the proposed rule, the fee would no longer increase for a second or subsequent request by the same party. This change is intended to simplify the rule and to avoid confusion when one party requesting a postponement has made a previous request, but one or more of the other parties requesting the same postponement have not made previous requests.

The proposed rule also gives the panel the authority to allocate the postponement fees among non-requesting parties if the panel determines that the non-requesting party caused or contributed to the need for the postponement.

Withdrawing Claims (Proposed Rule 12702)

The current Code does not contain any guidance with respect to withdrawing claims. This occasionally causes confusion, particularly with respect to the consequences of withdrawing a claim at a particular stage in an arbitration. To provide guidance to parties, proposed Rule 12702 would provide that before a claim has been answered by a party, a claimant may withdraw the claim against that party with or without prejudice. However, after a claim has been answered by a party, a claimant may only withdraw its claim against that party with prejudice, unless the panel decides, or the claimant and that party agree, otherwise. NASD believes that the proposed rule strikes the appropriate balance between allowing claimants to withdraw their claims without prejudice before a respondent has expended significant resources responding to the claim, and protecting the respondent from having to respond to the same claim multiple times.

Simplified Arbitration Rule (Proposed Rule 12800)

The simplified arbitration rule has been significantly shortened. Currently, in addition to the procedures that are unique to simplified arbitrations, Rule 10302 repeats some, but not all, of the general provisions that apply to both regular and simplified cases. The proposed rule includes only those provisions that are unique to simplified cases.

NASD has deleted the special time limits or deadlines for pleadings in simplified cases, because the time limits would now be the same as those in regular cases. Frequent users of the forum report that the time limits in simplified cases are routinely extended under the current rule. To provide better guidance to parties, NASD believes that the Code should reflect that, in practice, the time to answer in simplified cases is typically the same as it is in regular cases.

Under proposed Rule 12800, the single arbitrator would be selected from the chairperson roster, unless the parties agreed otherwise. The single arbitrator would not be able to request a three-arbitrator panel, and the arbitrator would no longer have the option of dismissing without prejudice a counterclaim or other responsive pleading that increased the amount in dispute above the simplified case threshold. If a pleading increased the amount in dispute above the threshold, the case would be administered under the regular provisions of the Code. Similarly, the proposed rule would eliminate the ability of the single arbitrator to require a hearing. However, a hearing would still be held upon the customer's request.

NASD believes that these changes will make the simplified arbitration rule easier for parties to understand, and will also streamline and simplify the administration of small claims in the NASD forum.

Fees (Proposed Rules 12900 – 12903)

One of the most frequent criticisms of the current Code is that the fee schedules are difficult to understand, particularly with respect to what claimants must pay at the time of filing. Currently, claimants must pay a non-refundable filing fee, and an initial hearing session deposit that may be refundable under certain circumstances. In addition, parties also must pay hearing session fees for each hearing session. Although the filing fee and the initial hearing session deposit are both due upon filing, they are presented in the Code as separate fees, making it hard for some parties to understand the total amount due upon filing. To address this issue, and to make the fee schedules easier to read, the fee schedules have been revised in two significant ways.

First, the filing fee and the hearing session deposit have been combined into one single fee that is paid when a claim is filed. With two exceptions, described below, the amounts paid by claimants would not change. Although what is now the refundable hearing session deposit would no longer be paid separately, an amount equal to the current hearing session deposit or a portion thereof may be refunded if NASD receives notice that the case has been settled more than 10 calendar days prior to the hearing on the merits. (Under the current Code, the initial hearing session deposit may be refunded if NASD receives notice that the case is settled 8 days prior to the hearing on the merits; this has been changed to 10 days as part of the overall effort to standardize the time frames used in the Code.) The consolidation of the filing fee and the hearing session

deposit is intended to make it easier for claimants to understand how much they have to pay when they file a claim and what, if any, portion of that fee may be refunded.

Second, several sets of brackets in the filing fee schedule would be condensed. Currently, there are 14 separate fee brackets in the customer filing fee schedule. Some of the fees for different brackets are the same; others are separated by amounts ranging from \$25-\$100. The result is a schedule that is confusing and difficult to read. To simplify the schedule, the customer filing fee brackets would be reorganized as follows: the \$25,000-\$30,000 bracket (\$600) and the \$30,000-50,000 bracket (\$625) would be combined, and the filing fee for the new bracket would be \$600; and the \$1 million - \$3 million bracket (\$1,700), the \$3 million - \$5 million bracket (\$1,800), the \$5 million - \$10 million bracket (\$1,800) and the over \$10 million bracket (\$1,800) would be combined, and the filing fee for the new bracket would be \$1,800.

The proposed changes would not result in an increase in the total amount of fees paid by customers or associated persons when filing a claim, except that for claims of \$30,000 to \$50,000, the customer's overall filing fees would decrease by \$50, and for claims of \$1 million to \$3 million, the customer's overall filing fees would increase by \$100. Corresponding changes would be made to the member filing fee schedule.

NASD believes that these changes will 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.

(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 Customer Code will protect investors and the public interest by making the arbitration process more transparent for parties, providing useful guidance to parties, arbitrators and staff, and helping to standardize and streamline the administration of NASD arbitrations. If the proposed Code is approved, NASD will offer training on the new Code to arbitrators, users of the forum, and staff.

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. Appendix A - List of Changes from the Proposed Rule Change to Amendment No. 1.
3. Redline of the Text of the proposed Customer Code.
4. Redline of the Text of Amended NASD Discovery Guide.
5. Redline of the chart comparing the current Code and the proposed Customer Code.
6. Text of the proposed Customer Code.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2003-158)

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

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 October 15, 2003, and amended on January 3 and 19, 2005, and amended again on April 8, 2005, 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”), 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.

NASD is also proposing to make certain substantive amendments to the Code as described herein. This rule filing contains the proposed Customer Code, the text of which is attached as an exhibit.³ Also, a chart comparing the current Code and the proposed Customer Code is attached as an exhibit. An old-to-new conversion guide will be posted on the Web site at www.nasd.com.⁴ Proposed corresponding amendments to NASD's Discovery Guide are attached as an exhibit.

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

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. Because the Code is used by investors, including investors who appear pro se in the NASD forum, NASD undertook to rewrite the current Code in "plain English." Over time,

³ The Industry Code and the Mediation Code have been filed separately with the Commission as SR-NASD-2004-011 and SR-NASD-2004-013, respectively.

⁴ For purposes of this filing, the version of the current and proposed Codes used in the comparison and conversion charts reflects all Dispute Resolution rule filings approved by the Commission since the proposed rule change was filed on October 15, 2003.

the goals of the plain English initiative expanded beyond simplifying the language and sentence structure of the rules in the Code to include:

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

Plain English

When it launched its “plain English” initiative in 1998, the SEC published a “Plain English Handbook,” to provide guidance to issuers and SROs in drafting materials intended to be used by investors. The SEC’s Plain English Handbook 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.

In revising the Code, NASD has implemented these guidelines wherever possible. Throughout the proposed Code, NASD has simplified language and eliminated unnecessarily legalistic or arcane terminology. Long rules, such as current Rule 10308, governing arbitrator selection, and current Rule 10321, governing filing and responding to an arbitration claim, have been broken into several shorter rules. (See proposed Rules 12400-12406, and proposed Rules 12300-12313, respectively.) Where appropriate, lists are presented in bullet point format, and active verbs are used. The proposed Code also contains a new definitions rule (proposed Rule 12100) that defines commonly used terms applicable throughout the Code. In the current Code, some rules, such as Rule 10308, contain definitions applicable to the rule only, but there is not a general definitions rule that applies to the entire Code. NASD believes that a comprehensive definitions rule will make the Code easier to understand and to use, and will help eliminate

confusion about the meaning and scope of frequently used terms. It will also allow NASD to use shorter phrases, or single words, in place of longer phrases. For example, the phrase “dispute, claim, or controversy” has been replaced by the word “dispute,” which has been defined in Rule 12100 to mean the longer phrase. This makes rules easier to read and understand, without changing the meaning of the Code.

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. Although many of the rules in the Customer and Industry Codes will be identical, NASD believes that maintaining separate arbitration codes will eliminate confusion regarding which rules are applicable to which disputes. NASD also believes that maintaining a separate Mediation Code will be particularly useful to parties submitting matters 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 code 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. For example, the Customer Code will use the Rule 12000 series, which is currently unused. The Industry Code will use the Rule 13000 series, and the Mediation Code will use the Rule 14000 series, both 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.

To make it easier to find specific rules, the Customer Code will be divided into the following nine parts, which are intended to approximate the chronological order of a typical arbitration:

- Part I (Rule 12100 et seq.) contains definitions, as well as other rules relating to the organization and authority of the forum;
- Part II (Rule 12200 et seq.) contains general arbitration rules, including what claims are subject to arbitration in the NASD forum;
- Part III (Rule 12300 et seq.) 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 (12400 et seq.) contains rules relating to the appointment, authority and removal of arbitrators;
- Part V (Rules 12500 et seq.) contains rules governing the prehearing process, including proposed new rules relating to motions and discovery;
- Part VI (Rules 12600 et seq.) contains rules relating to hearings;
- Part VII (Rules 12700 et seq.) contains rules relating to the dismissal, withdrawal, or settlement of claims;
- Part VIII (Rules 12800 et seq.) contains rules relating to simplified (small cases) arbitrations and default proceedings; and
- Part IX (Rules 12900 et seq.) contains rules relating to fees and awards.

Description of Other Changes

In addition to simplifying and reorganizing the Code, the proposed rule change includes several other changes to the Customer Code that are intended to make the NASD arbitration process as simple, uniform and transparent as possible. Some of the proposed changes codify or clarify current NASD practice. Others are substantive changes that are intended to provide guidance to parties, resolve open questions, or streamline or standardize the administration of NASD arbitrations. Only proposed substantive changes are discussed in detail below. Any proposed changes to the Code that are not discussed are nonsubstantive revisions.

The proposed changes are discussed below, in the order that they appear in the Customer Code.

Agreement of the Parties (Proposed Rule 12105)

Both the current Code and proposed Customer Code permit parties to an arbitration to agree to modify certain provisions, such as the number of arbitrators on a panel, or the time to respond to a pleading. Occasionally, all active parties to an arbitration agree to modify a provision, but an inactive party does not respond to notices or participate in the decision. Under a literal reading of the current Code, the active parties to the arbitration would not be able to agree to the modification, even though the inactive party was not participating in the arbitration. This can cause unnecessary delay and frustration for the active parties.

NASD believes that the non-appearance of an inactive party should not prevent active parties to an arbitration from exercising control over the arbitration process. To address this concern, proposed Rule 12105 would provide that, when the Code allows the parties to an arbitration to modify a provision of the Code, or a decision of the Director or the panel, the agreement of all named parties is required, unless the Director or panel determines that a party is

inactive in the arbitration or has failed to respond after adequate notice has been given.

Use of the Forum (Proposed Rule 12203)

Currently, Rule 10301(b) provides that the Director of Arbitration, upon approval of the National Arbitration and Mediation Committee (“NAMC”) or its Executive Committee, may decline the use of the NASD arbitration forum if the “dispute, claim, or controversy is not a proper subject matter for arbitration.”

Occasionally, situations arise in which the Director believes that it is in the best interest of the forum to deny use of the forum for reasons other than subject matter. For example, the current rule does not specifically permit the Director to deny the forum when NASD has reason to believe that a party would present a security risk to the forum or to other parties. Furthermore, the requirement that the Director must first obtain approval of either the NAMC, or its Executive Committee, is burdensome and time-consuming, making it difficult for the Director or the forum to respond appropriately in emergency situations.

To address this concern, proposed Rule 12203(a) would provide that the Director may decline to permit the use of the NASD arbitration forum if the Director determines that, given the purposes of NASD and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of parties, arbitrators or NASD staff. In addition, the provision requiring approval of the NAMC or its Executive Committee would be deleted. However, to ensure that the authority to deny the forum could not be delegated by the Director, the rule would provide that only the Director or the President of NASD Dispute Resolution may exercise the Director’s authority under the rule. NASD believes that this rule change will give the Director limited, but crucial, flexibility to protect the integrity and the security of the NASD forum.

Shareholder Derivative Actions (Proposed Rule 12205)

Currently, the Code does not specifically address whether shareholder derivative actions may be arbitrated at NASD. Such claims are not eligible for arbitration at NASD because, by definition, they involve corporate governance disputes that do not arise out of or in connection with the business of a member firm or an associated person. Nonetheless, the question arises from time to time, occasionally after a claimant has filed a statement of claim.

Proposed Rule 12205, which is consistent with New York Stock Exchange Rule 600(e), would clarify that shareholder derivative actions are not eligible for arbitration at NASD. NASD believes that the inclusion of this rule would help avoid confusion, provide guidance to parties, and conserve resources expended when parties seek to arbitrate such matters at NASD.

Extensions of Deadlines (Proposed Rule 12207)

Currently, Rule 10314(b)(5) provides that deadlines established by the Code for filing or serving pleadings may be extended by the Director, or with the consent of the initial claimant. This provision does not provide guidance with respect to the extension of other deadlines established by the Code, or by the panel or Director, and can also cause confusion with respect to responsive pleadings filed by the initial claimant. The current rule also provides that extensions of time for filing an answer are disfavored and will only be granted in extraordinary circumstances.

To eliminate confusion, and to provide more comprehensive guidance regarding when and under what circumstances deadlines may be extended, proposed Rule 12207 would provide that the parties may agree in writing to extend or modify any deadline for serving an answer; returning arbitrator or chairperson lists; responding to motions; or exchanging documents or witness lists. If the parties agree to extend or modify a deadline, the proposed rule would require

that they notify the Director of the new deadline in writing. The proposed rule would also provide that the panel may extend or modify any deadline listed above, or any other deadline set by the panel, either on its own initiative or upon motion of a party. Finally, the rule would provide that the Director may (1) modify or extend any deadline or time period set by the Code for good cause, and (2) modify or extend any deadline set by the panel in extraordinary circumstances. Although good cause is a lower standard than extraordinary circumstances, which refers to unexpected and uncontrollable events such as weather-related or security emergencies, good cause is not a negligible standard. In the context of the proposed rule, the good cause requirement means that extensions of Code deadlines by the Director are generally disfavored, and that the Director must take into account the effect of the extension on all parties before granting such a request.

Ex Parte Communications (Proposed Rule 12210)

Proposed Rule 12210 would prohibit ex parte communications between parties and arbitrators. The proposed rule is based on general ex parte rules applicable in court proceedings, and reflects current NASD practice. The NASD Arbitrators' Manual and NASD arbitrator training materials direct arbitrators to avoid ex parte communications with parties, and arbitrators receive training on how and why to do so. Materials provided to parties also advise parties to avoid ex parte communications with arbitrators. For example, NASD's 'Top Ten' Standards Of Good Practice At Arbitration Hearings (available on NASD's Web site, www.nasd.com), states that participants in NASD arbitrations "should not engage in conversation with arbitrators in the absence of the other party(ies)."

However, the current Code does not address ex parte communications. To provide additional guidance to arbitrators and parties, and to further ensure the integrity of the NASD

arbitration process, the revised Code would include proposed Rule 12210 to expressly prohibit ex parte communication between parties and arbitrators.

Sanctions (Proposed Rule 12212)

Currently, Rule 10305(b), governing the dismissal of proceedings, provides that the “arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.” In addition, the NASD Discovery Guide states that “[t]he panel has wide discretion to address noncompliance with discovery orders. For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys’ fees caused by noncompliance.”

Proposed Rule 12212 would codify the sanction options available to arbitrators that are described in the Discovery Guide, and extend them beyond the discovery context to apply to non-compliance with any order of the panel or provision of the Code. The proposed rule would also allow the panel to dismiss a claim under the same conditions as they may currently, although it would use the term “previous” rather than “lesser” sanctions, in order to avoid potential confusion regarding whether a previous sanction was “lesser” or “greater.” NASD believes that this rule change will encourage parties to comply with both the Code and with orders of the panel, and will also clarify the authority of arbitrators to ensure the fair and efficient administration of arbitration proceedings when parties fail to do so.

Hearing Location (Proposed Rule 12213)

NASD currently maintains more than 55 designated hearing locations for NASD arbitrations and mediations. Generally, when a claim is filed in a case involving a customer, NASD selects the hearing location that is closest to where the customer lived at the time the dispute arose. To make the arbitration process more transparent, proposed Rule 12213 would codify this practice. (The use of the term “generally” reflects that fact that while the default location is the one closest to where the customer lived at the time the dispute arose, the Director does have discretion to select another location that would be more appropriate or less burdensome to the parties given the specific facts of the case. For example, if the customer lived in California at the time the dispute arose, but has since moved to New York, and the firm does business in New York, the Director could select New York as the hearing location.)

The proposed rule would also clarify that before arbitrator lists are sent to the parties under Rule 12403, the parties may agree in writing to a different hearing location other than the one selected by the Director, and that the Director may change the hearing location upon motion of a party. NASD believes that the proposed rule will provide guidance to parties about where their arbitration will take place, which may be particularly helpful to investors who may be considering filing a claim in arbitration.

Time to Answer Counterclaims and Cross Claims (Proposed Rules 12304 and 12305)

Currently, Rule 10314 provides that claimants have only 10 days to answer a counterclaim, but a respondent answering a cross claim has 45 days to file an answer to the cross claim, even if the respondent has already answered the initial claim. This discrepancy can cause delay in the proceedings. NASD believes that parties who have already filed or served a pleading should have the same amount of time to respond to subsequent pleadings. NASD also

believes that 10 days is insufficient, while 45 days is too long. NASD believes that 20 calendar days is the appropriate amount of time for parties to respond to both counter and cross claims.

Therefore, proposed Rule 12304 would extend the time that a claimant has to file a response to a counterclaim from 10 to 20 days from receipt of the counterclaim. In addition, proposed Rule 12305 would shorten the time that a respondent has to respond to a cross claim from 45 days to 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim.

Deficient Claims (Proposed Rule 12307)

Under current NASD practice, if a claimant files a deficient, or incomplete, claim, NASD will notify the claimant, and the claimant is given 30 days to correct the deficiency. If the deficiency is not corrected within that time, the claim is dismissed without prejudice. Reasons for deficiencies include failure to include required information in the statement of claim, failure to pay required fees, and failure to properly execute the NASD Uniform Submission Agreement.

NASD's practice with respect to deficiencies is consistent with the Arbitration Procedures published by the Securities Industry Conference on Arbitration ("SICA"). However, the current Code does not expressly address what constitutes a deficiency, or explain the process for identifying and correcting deficiencies. Proposed Rule 12307 would codify NASD's deficiency practice. Specifically, it would provide that the Director will not serve a deficient, or incomplete, claim, and will enumerate the most common types of deficiencies. The proposed rule would also provide that Director will notify the claimant in writing if the claim is deficient. If all deficiencies are not corrected within 30 calendar days from the time the claimant receives notice, the Director will close the case without serving the claim, and will not refund any filing fees or deposits paid by the claimant. The proposed rule would also make clear that the same

standards apply to deficient counterclaims, cross claims and third party claims served directly by parties, and would prohibit arbitrators from considering such claims unless the deficiencies were corrected within the time allowed. NASD believes that including the deficiency standards and practice in the Code will provide useful guidance to parties, and will reduce delay in NASD arbitrations by reducing the number of deficient claims.

Amending Pleadings to Add Parties (Proposed Rule 12309)

Under the current Code, parties may amend their pleadings at any time prior to the appointment of the arbitration panel. After panel appointment, parties must obtain approval of the arbitrators before amending a pleading. If a party is added to an arbitration proceeding before the Director has consolidated the other parties' arbitrator rankings under current Rule 10308, the Director will send the arbitrator lists to the newly-added party, and the newly-added party may participate in the arbitrator selection process. However, if a party amends a pleading to add a new party to the proceeding between the time that the Director consolidates the arbitrator lists and the time the panel is appointed, the newly-added party is not able to participate in the arbitrator selection process, or to object to being added to the arbitration.

To address this issue, which has been the subject of concern among some users of the forum, proposed Rule 12309 would provide that no party may amend a pleading to add a party during the window of time between the date that ranked arbitrator lists are due to the Director and the panel is appointed. Once the panel is appointed, a pleading could not be amended for any reason without approval of the panel. Proposed Rule 12309(c) would also make clear that the party to be added after panel appointment must be given an opportunity to be heard before the panel may grant the motion to amend. This change will ensure that a party added to an

arbitration by amendment either will be able to participate in the arbitrator selection process, or will have the opportunity to object to being added to the proceeding.

Time to Answer Amended Pleadings (Proposed Rule 12310)

Currently, Rule 10328 provides that parties have 10 business days to answer an amended pleading. Other rules in the current Code refer to calendar days. In the interest of uniformity, proposed Rule 12100(h) defines the term “day” to mean calendar day. To reflect this definition, proposed Rule 12310 would give parties 20 calendar days, rather than 10 business days, to respond to amended pleadings. Although this represents a slight extension of time, it is consistent with the time to respond to counterclaims and cross claims under proposed Rules 12304 and 12305. Because standardizing time frames is part of NASD’s plain English initiative, NASD believes that 20 calendar days is an appropriate time period for responding to amended pleadings.

Rules Governing Number, Selection and Appointment of Arbitrators

The revised Code contains several amendments to the rules governing the number, selection and appointment of arbitrators.

Number of Arbitrators

Under current Rule 10308(b), if the amount of a claim is \$25,000 or less, the arbitration panel consists of one public arbitrator, unless that arbitrator requests a three-arbitrator panel. If the claim is more than \$25,000 but not more than \$50,000, the panel consists of one public arbitrator unless either the single arbitrator, or any party in its initial pleading, requests a three-arbitrator panel. Claims of more than \$50,000 are heard by a three-arbitrator panel.

To streamline the administration of smaller claims, and minimize the cost of pursuing small claims, proposed Rule 12401 would eliminate the ability of the single arbitrator to request

a three-arbitrator panel for any claim of \$50,000 or less. Parties in cases involving more than \$25,000, but not more than \$50,000, could still request a three-arbitrator panel.

Chairperson Lists

Currently, NASD maintains a roster of public and non-public arbitrators. Depending on the amount in dispute, an arbitration panel in a customer dispute will consist either of one public arbitrator, or two public arbitrators and one non-public arbitrator. Parties in three-arbitrator cases receive two lists: one of non-public arbitrators and one of public arbitrators. The lists are generated by the Neutral List Selection System (“NLSS”), NASD’s computerized system for generating lists of arbitrators from NASD’s rosters of arbitrators for the selected hearing location. By a process of striking and ranking the listed arbitrators, the parties select one non-public and two public arbitrators from the lists generated by NLSS. Once the panel is appointed, the parties jointly select the chairperson from the panel, or, if the parties do not agree, the Director appoints the highest-ranked public arbitrator on the panel to serve as chairperson.⁵

Although NASD provides voluntary chairperson training to its arbitrators, arbitrators who serve as chairperson are not currently required to have chairperson training, to have any particular experience, or to meet any other specific criteria beyond the requirements for serving as an arbitrator. Over the years, one of the most frequent suggestions for improving the quality and efficiency of NASD arbitrations is to ensure that chairpersons, who play a vital role in the administration of cases, have some degree of arbitrator experience and training.

NASD agrees that requiring trained and experienced chairpersons would significantly enhance the quality of its arbitration forum. However, NASD also believes that the criteria or

⁵ NASD estimates that parties agree on a chairperson only about 20% of the time.

training requirements should not prevent public arbitrators of any professional or educational background from qualifying to serve as chairpersons of panels in customer cases.

To address these concerns, the proposed Customer Code would require that NASD create and maintain a third roster of public arbitrators who are qualified to serve as chairpersons. In three-arbitrator cases, parties would receive three lists of arbitrators: a non-public list, a public list and a public chair-qualified list. The parties would select the chairperson from the chair-qualified list in the same manner and at the same time that they select the other members of the panel. In single-arbitrator cases, the arbitrator would be selected from a list of public chair-qualified arbitrators, unless the parties agreed otherwise.

Under proposed Rule 12400, public arbitrators would be eligible for the chairperson roster if they have completed chairperson training provided by NASD, or have substantially equivalent training or experience, and either:

- Have a law degree and are 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 (“SRO”) in which hearings were held; or
- Have served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.

Substantially equivalent training or experience would include service as a judge or administrative hearing officer, chairperson training offered by another recognized dispute resolution forum, or the like. Decisions regarding whether particular training or experience other than NASD chairperson training would qualify under this provision would be in the sole discretion of the Director. NASD believes that these criteria strike the appropriate balance between ensuring that arbitrators who serve as chairpersons or single arbitrators have the requisite experience to fairly and efficiently administer their cases, and allowing arbitrators of all professional backgrounds to qualify as chairpersons. Public arbitrators who qualify under these criteria will be placed on the

chairperson roster only if they agree to serve as chairpersons; otherwise, they will remain on the general public arbitrator roster. To avoid duplication of names on the lists sent to parties, arbitrators who are on the chairperson roster will not be on the general public arbitrator roster.

NLSS Changes

The proposed Code would implement several changes to the operation of NLSS. NLSS would generate arbitrator names from the NASD rosters on a random, rather than rotational, basis. This change is primarily driven by computer programming requirements. NASD is currently developing a new computerized case-management system. This change would make the anticipated upgrades to the NLSS component of the new case management system significantly simpler and less expensive to program and implement.

In addition, the proposed Code would eliminate the ability of parties to unilaterally request arbitrators with particular expertise, a practice that is an ongoing source of controversy, as well as burdensome for the NASD staff to administer.

Finally, proposed Rule 12403 would expand the number of names of proposed arbitrators provided to the parties to seven, but would limit the number of arbitrators that each party may strike from each list to five. NASD believes that expanding the lists, but limiting the number of strikes each party may exercise, will expedite panel appointment and minimize the likelihood that the Director will have to appoint an arbitrator who was not on the original lists sent to parties. Currently, parties are allowed unlimited strikes, which often results in no arbitrators being left on the consolidated list. In such cases, the administration of the arbitration is delayed, and the Director must appoint arbitrators to fill the panel.

Collectively, NASD believes that these modifications to NLSS would streamline and simplify the arbitrator selection process and enhance the quality of NASD arbitrations.

Appointment of Arbitrators (Proposed Rule 12406)

In the past, questions have occasionally arisen regarding when appointment of arbitrators occurs. To address these questions, paragraph (d) of proposed Rule 12406 would clarify that appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. In addition, as part of the chronological reorganization of the Code, the arbitrator oath requirement that is currently in Rule 10327 has been included in proposed Rule 12406.

Arbitrator Recusal (Proposed Rule 12409)

Under current NASD practice, parties may request that an arbitrator recuse himself or herself from the panel at any time. However, the current Code does not address arbitrator recusal. To provide guidance to parties, proposed Rule 12409 would provide that any party may ask an arbitrator to recuse himself or herself from the panel for good cause. The proposed rule would also clarify that requests for arbitrator recusal are decided by the arbitrator who is the subject of the request. Some users of the forum believe that recusal requests should be made to the full panel. Courts have held, however, that recusal decisions are within the discretion of the panel, and therefore, tend to uphold these decisions on appeal.⁶ However, the Director may remove arbitrators for cause under proposed Rule 12410 on the same grounds applicable in current Rules 10308(d), 10312(d) and 10313.

Replacement of Arbitrators (Proposed Rule 12411)

Under the current Code, the provisions regarding replacement of arbitrators are contained

⁶See ANR Coal Company, Incorporated v. Cogentrix of North Carolina, Incorporated, 173 F.3d 493, 499-502 (4th Cir. 1999); Consolidated Coal Company v. Local 1643, United Mine Workers of America; District 17, United Mine Workers of America, 48 F.3d 125, 127-130 (4th Cir. 1995); Andrew Jason, et al. v. Halliburton Company, 2002 U.S. Dist. LEXIS 19706, 10-16 (E.D. La. 2002); and Jeereddi A. Prasad, M.D., Inc., Retirement Plan Trust Profit Sharing Plan and Jeereddi A. Prasad, M.D. v. Investors Associates, Incorporated, Herman Epstein, and Lawrence Joseph Penna, 82 F. Supp. 2d 365, 370 n.9 (D. N.J. 2000).

in Rules 10308(d)(3) and 10313, which contain numerous cross-references to other rules.

Proposed Rule 12411 would consolidate the various current rules. The proposed rule would also extend the option of electing to proceed with only the remaining arbitrators to all stages of the proceeding, and eliminate the 5-day limit on electing that option contained in current Rule 10313. NASD believes that parties should have the right to decide jointly to proceed with only the remaining arbitrators regardless of when the replacement occurs, and that the parties should be able to elect that option up until the time the appointment of the replacement arbitrator occurs. Otherwise, proposed Rule 12411 does not contain any substantive changes from the current rules upon which it is based.

Determinations of Arbitration Panel (Proposed Rule 12414)

The proposed rule reflects that under the Code, and applicable law, some decisions of the panel may be made by a single member of a three-arbitrator panel. For example, Rule 12503 provides that some motions may be decided by a single arbitrator. Also, under Rule 12512, applicable law may permit a single arbitrator to issue a subpoena.

Initial Prehearing Conferences (Proposed Rule 12500)

Proposed Rule 12500 would codify the portion of the NASD Discovery Guide relating to initial prehearing conferences (“IPHCs”). Since the adoption of the Discovery Guide in 1999, IPHCs have been standard practice in NASD arbitrations. The IPHC gives the panel and the parties an opportunity to organize the management of the case, set a discovery cut-off date, identify and establish a schedule for potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve many other preliminary issues. Users of the forum have found the IPHC to be a valuable tool in managing the administration of arbitrations. NASD believes that the proposed rule, which provides that an IPHC will be held in every case unless the

parties jointly agree on certain scheduling and other enumerated issues in advance, will provide valuable guidance to parties and arbitrators about the role of IPHCs in NASD arbitrations.

Recording Prehearing Conferences (Proposed Rule 12502)

Currently the Code is silent with respect to whether and under what circumstances a prehearing conference will be tape-recorded. Proposed Rule 12502 would provide that prehearing conferences are generally not tape-recorded as a matter of course (with the exception of prehearing conferences to decide dispositive motions, discussed below). However, the rule would permit the panel to decide to tape-record a prehearing conference on its own initiative, or at the request of a party. The rule would also provide that, if the prehearing conference is tape-recorded, the Director will provide a copy of the tape to any party upon request, for a nominal fee. The rule does not specify the fee, because the fee may vary slightly depending on the rates charged by NASD's telephone service provider, which normally makes the initial recording of telephonic hearing sessions. The current fee is \$15 per tape. (Because NASD must arrange in advance to have telephonic hearing sessions taped, NASD will instruct arbitrators that they should notify NASD at least 24 hours in advance when they have decided that a prehearing conference should be taped.)

Motions (Proposed Rule 12503)

Although motions are increasingly common in arbitration, the current Code does not refer to motions or provide any guidance with respect to motions practice. As a result, motions practice lacks uniformity, and parties and arbitrators alike are often unsure how motions should be made, responded to or decided. To provide guidance to parties and arbitrators, and to standardize motions practice in the NASD forum, proposed Rule 12503 would establish procedures and deadlines for making, responding to and deciding motions.

Some users of the forum have expressed the concern that adopting a motions practice rule will encourage more motions. Although NASD understands this concern, NASD believes that motions have already become an inescapable part of most arbitrations. Therefore, NASD believes that the Code should provide as much guidance about motions as possible to parties, particularly infrequent users of the forum. However, in an effort to deter unnecessary motions, the rule would require that, before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. The rule would also require that every motion, whether written or oral, include a description of the efforts made by the moving party to resolve the matter before making the motion.

Another common concern about adopting a motions practice rule is that it will detract from the informal nature of arbitration. To address this concern, the rule would make clear that most motions may be made either orally or in writing, and that written motions need not take any particular form.

Paragraph (c) of the proposed rule would outline who decides what motions. For example, paragraph (c)(1) provides that motions relating to the use of the forum under proposed Rule 12203 and removal of an arbitrator under proposed Rule 12410 are decided by the Director, because these motions are filed and decided before a panel has been appointed. Paragraph (c)(2) would provide that motions relating to combining or separating claims or arbitrations, or changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed. Paragraph (c)(3) provides that discovery-related motions are decided by one arbitrator, generally the chairperson. This provision reflects that while the chairperson is usually the person to decide such motions, the chairperson may not always be available, and the parties or the Director may decide to refer the matter to one of the other

arbitrators. The provision also states that the arbitrator who initially hears a discovery-related motion may refer such motions to the full panel, either at his or her own initiative or at the request of a party. The arbitrator must refer motions relating to issues of privilege to the full panel at the request of a party. Paragraph (c)(4) provides that motions relating to arbitrator recusal are decided by the arbitrator who is the subject of the motion, as provided by proposed Rule 12409. Finally, the rule provides that all other motions not covered in the preceding paragraphs of the rule are decided by the full panel, unless the Code provides or the parties agree otherwise.

Dispositive Motions (Proposed Rule 12504)

Another recurring question in NASD arbitrations is whether, and to what extent, arbitrators have the authority to decide dispositive motions before a hearing on the merits. In its Follow-up Report on Matters Relating to Securities Arbitration, the General Accounting Office (“GAO”) noted that while NASD’s arbitration rules do not specifically provide for dispositive motions, case law generally supports the authority of arbitrators to grant motions to dismiss claims prior to the hearing on the merits.⁷ Because the Code provides no guidance with respect to this question, arbitrator decisions with respect to it lack uniformity.

Generally, NASD believes that parties have the right to a hearing in arbitration. However, NASD also acknowledges that in certain extraordinary circumstances, it would be unfair to require a party to proceed to a hearing. Specifically, the proposed rule would:

- Provide that, except for motions relating to the eligibility of claims under the Code’s six year time limit, motions that would resolve a claim before a hearing on the merits are discouraged, and may only be granted in extraordinary circumstances;
- Require that a prehearing conference before the full panel must be held to discuss the motion before the panel could grant it; and

⁷ U.S. General Accounting Office, Follow-up Report on Matters Relating to Securities Arbitration (April 11, 2003).

- Allow the panel to issue sanctions against a party for making a dispositive motion in bad faith.

NASD believes that this rule proposal, which was developed over several years with input from industry and public members of the NAMC, will provide necessary guidance to parties and arbitrators, and make the administration of arbitrations more uniform and transparent. NASD believes that the rule strikes the appropriate balance between allowing the dismissal of claims in limited, extraordinary circumstances and reinforcing the general principle that parties are entitled to a hearing in arbitration.

Discovery (Proposed Rules 12505 – 12511)

One of the most frequent comments made by users of the NASD forum is that the discovery procedures outlined in NASD's Discovery Guide are routinely ignored, resulting in significant delay and the frequent need for arbitrator intervention in the discovery process. This is partly due to the fact that the Discovery Guide establishes guidelines rather than mandatory procedures.

To address these concerns, proposed Rules 12505-12511 would codify the discovery procedures currently outlined in the NASD Discovery Guide, with certain substantive changes. The proposed Code would not contain the actual Document Production Lists, which would remain in the Discovery Guide, but it would make clear that producing or objecting to documents on applicable lists, as well as other documents requested by parties, is mandatory. The proposed rules would extend the time parties have to respond to Document Production Lists and other discovery requests from 30 to 60 days, but would also provide more serious consequences when parties fail to respond, or when parties frivolously object to production of documents or information. In addition, proposed Rule 12512 would codify the sanctions provisions of the

Discovery Guide, clarifying the authority of arbitrators to punish parties for non-compliance with discovery rules or orders of the panel. NASD believes that, collectively, these changes will significantly minimize the number of discovery disputes in NASD arbitrations.

Because much of what is currently contained in the Discovery Guide would not be incorporated into the Code, the Discovery Guide would be amended to include only the remaining information, including the Document Production Lists themselves.

Subpoenas (Proposed Rule 12512)

Current Rule 10322 provides that the arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law, and that all parties must be given a copy of a subpoena upon its issuance. The rule also provides that parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

Proposed Rule 12512 is substantially identical to the current rule Code, but would also require that if a subpoena is issued, the issuing party must send copies to all other parties at the same time and in the same manner as the party that issued the subpoena. This modification is intended to ensure that parties receive notice of the subpoena in a timely manner.

Exchange of Documents and Witness Lists (Proposed Rule 12514)

Current Rule 10321(d) requires that at least 20 days before a hearing on the merits is scheduled to begin, all parties must exchange copies of all documents in their possession that they intend to present at the hearing, and must identify all witnesses they intend to present at the hearing. As a practical matter, many of the documents will already have been exchanged through discovery. Users of the forum have advised NASD that this rule would be less burdensome, and more useful, if it were amended to require only that parties exchange all

documents they intend to use at the hearing that have not previously been exchanged. The proposed rule would also increase the consequences of failing to comply with this requirement. Under the current rule, the panel may exclude evidence not exchanged in a timely manner. Proposed Rule 12514 would create a presumption that parties could not use any documents at the hearing that were not exchanged, or call any witnesses at the hearing who were not identified, within the time provided by the rule, unless the panel determines that good cause exists. The proposed rule specifically provides that good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments at the hearing.

Postponements (Proposed Rule 12601)

In the proposed Code, hearing adjournments are referred to as hearing postponements, for plain English purposes. Paragraph (a) of proposed Rule 12601 has been amended to provide that the panel may not grant requests to postpone a hearing that are made within 10 days of a scheduled hearing session unless the panel determines that good cause exists. This provision is intended to reduce the number of last minute requests for postponements, a practice that many users of the forum believe results in unnecessary delay and unfairness to parties.

In paragraph (b) of the proposed rule, the fee would no longer increase for a second or subsequent request by the same party. This change is intended to simplify the rule and to avoid confusion when one party requesting a postponement has made a previous request, but one or more of the other parties requesting the same postponement have not made previous requests.

The proposed rule also gives the panel the authority to allocate the postponement fees among non-requesting parties if the panel determines that the non-requesting party caused or contributed to the need for the postponement.

Withdrawing Claims (Proposed Rule 12702)

The current Code does not contain any guidance with respect to withdrawing claims. This occasionally causes confusion, particularly with respect to the consequences of withdrawing a claim at a particular stage in an arbitration. To provide guidance to parties, proposed Rule 12702 would provide that before a claim has been answered by a party, a claimant may withdraw the claim against that party with or without prejudice. However, after a claim has been answered by a party, a claimant may only withdraw its claim against that party with prejudice, unless the panel decides, or the claimant and that party agree, otherwise. NASD believes that the proposed rule strikes the appropriate balance between allowing claimants to withdraw their claims without prejudice before a respondent has expended significant resources responding to the claim, and protecting the respondent from having to respond to the same claim multiple times.

Simplified Arbitration Rule (Proposed Rule 12800)

The simplified arbitration rule has been significantly shortened. Currently, in addition to the procedures that are unique to simplified arbitrations, Rule 10302 repeats some, but not all, of the general provisions that apply to both regular and simplified cases. The proposed rule includes only those provisions that are unique to simplified cases.

NASD has deleted the special time limits or deadlines for pleadings in simplified cases, because the time limits would now be the same as those in regular cases. Frequent users of the forum report that the time limits in simplified cases are routinely extended under the current rule. To provide better guidance to parties, NASD believes that the Code should reflect that, in practice, the time to answer in simplified cases is typically the same as it is in regular cases.

Under proposed Rule 12800, the single arbitrator would be selected from the chairperson roster, unless the parties agreed otherwise. The single arbitrator would not be able to request a three-arbitrator panel, and the arbitrator would no longer have the option of dismissing without

prejudice a counterclaim or other responsive pleading that increased the amount in dispute above the simplified case threshold. If a pleading increased the amount in dispute above the threshold, the case would be administered under the regular provisions of the Code. Similarly, the proposed rule would eliminate the ability of the single arbitrator to require a hearing. However, a hearing would still be held upon the customer's request.

NASD believes that these changes will make the simplified arbitration rule easier for parties to understand, and will also streamline and simplify the administration of small claims in the NASD forum.

Fees (Proposed Rules 12900 – 12903)

One of the most frequent criticisms of the current Code is that the fee schedules are difficult to understand, particularly with respect to what claimants must pay at the time of filing. Currently, claimants must pay a non-refundable filing fee, and an initial hearing session deposit that may be refundable under certain circumstances. In addition, parties also must pay hearing session fees for each hearing session. Although the filing fee and the initial hearing session deposit are both due upon filing, they are presented in the Code as separate fees, making it hard for some parties to understand the total amount due upon filing. To address this issue, and to make the fee schedules easier to read, the fee schedules have been revised in two significant ways.

First, the filing fee and the hearing session deposit have been combined into one single fee that is paid when a claim is filed. With two exceptions, described below, the amounts paid by claimants would not change. Although what is now the refundable hearing session deposit would no longer be paid separately, an amount equal to the current hearing session deposit or a portion thereof may be refunded if NASD receives notice that the case has been settled more

than 10 calendar days prior to the hearing on the merits. (Under the current Code, the initial hearing session deposit may be refunded if NASD receives notice that the case is settled 8 days prior to the hearing on the merits; this has been changed to 10 days as part of the overall effort to standardize the time frames used in the Code.) The consolidation of the filing fee and the hearing session deposit is intended to make it easier for claimants to understand how much they have to pay when they file a claim and what, if any, portion of that fee may be refunded.

Second, several sets of brackets in the filing fee schedule would be condensed. Currently, there are 14 separate fee brackets in the customer filing fee schedule. Some of the fees for different brackets are the same; others are separated by amounts ranging from \$25-\$100. The result is a schedule that is confusing and difficult to read. To simplify the schedule, the customer filing fee brackets would be reorganized as follows: the \$25,000-\$30,000 bracket (\$600) and the \$30,000-\$50,000 bracket (\$625) would be combined, and the filing fee for the new bracket would be \$600; and the \$1 million - \$3 million bracket (\$1,700), the \$3 million - \$5 million bracket (\$1,800), the \$5 million - \$10 million bracket (\$1,800) and the over \$10 million bracket (\$1,800) would be combined, and the filing fee for the new bracket would be \$1,800.

The proposed changes would not result in an increase in the total amount of fees paid by customers or associated persons when filing a claim, except that for claims of \$30,000 to \$50,000, the customer's overall filing fees would decrease by \$50, and for claims of \$1 million to \$3 million, the customer's overall filing fees would increase by \$100. Corresponding changes would be made to the member filing fee schedule.

NASD believes that these changes will 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.

(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 Customer Code will protect investors and the public interest by making the arbitration process more transparent for parties, providing useful guidance to parties, arbitrators and staff, and helping to standardize and streamline the administration of NASD arbitrations. If the proposed Code is approved, NASD will offer training on the new Code to arbitrators, users of the forum, and staff.

(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

SR-NASD-2003-158: Reorganization and Revision of NASD Rules Relating to Customer Disputes

Appendix A - List of Changes from the Proposed Rule Change to Amendment No. 3

On October 15, 2003, NASD filed a proposed rule change with the Securities and Exchange Commission (SEC) to revise the customer portion of the NASD Code of Arbitration Procedure.¹ Since the initial filing, NASD has filed two amendments to the proposed rule change.² Based on discussions with SEC staff on March 9 and April 1, 2005, NASD has agreed to file Amendment No. 3 ("Amendment") to the proposed rule change. Because of the number of changes being made to the initial filing, this Amendment supersedes and replaces the proposed rule change in its entirety. This document lists the changes being made by the Amendment to the proposed rule change.³

- **IM-12000 (Failure to Act Under Provisions of Code of Arbitration Procedure).** The IM has been renumbered and the last paragraph has been reworded to simplify the language, so that it is consistent with the "plain English" standard used in the proposed Customer Code.
- **Rule 12100 (Definitions).** A catch-all provision has been added at the beginning of this section to incorporate the definitions of the NASD By-Laws into the Code.
- **Rule 12100(n) (Non-Public Arbitrator).** On March 7, 2005, the SEC approved a proposed rule change to adopt new interpretative material regarding mediators serving as arbitrators.⁴ The relevant portion of the approved interpretative material has been included in this rule.
- **Rule 12100(r) (Public Arbitrator).** On March 7, 2005, the SEC approved a proposed rule change to adopt new interpretative material regarding mediators

¹ See File No. SR-NASD-2003-158.

² Amendment No. 1 was filed on January 3, 2005. Amendment No. 2 was filed on January 19, 2005.

³ Unless otherwise noted, corresponding changes have been made to the chart comparing the current Code to the proposed Customer Code.

⁴ See Securities Exchange Act Rel. No. 34-51325 (March 7, 2005), 70 FR 12522 (March 14, 2005).

serving as arbitrators.⁵ The relevant portion of the approved interpretative material has been included in this rule.

- **Rules 12102(a) and (b) (National Arbitration and Mediation Committee).**

A reference to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) has been added to incorporate the authority and responsibilities of the Committee into the rule. Rule 12102(b) was amended to reflect the voting requirements and procedures set forth in the Delegation Plan.

- **Rule 12103(b) (Director of Dispute Resolution).** The language has been changed to describe more clearly the relationship between the Director and the Committee.

- **Rule 12104(b) (Effect of Arbitration on NASD Regulatory Activities).** The language has been modified to clarify that any arbitrator referrals for disciplinary investigation may be made only at the conclusion of the arbitration.

- **Rule 12203(a) (Denial of NASD Forum and Referral to Other Forums).** The language has been changed to specify under what circumstances the Director may deny access to the forum.

- **Rule 12207(c) (Extension of Deadlines).** The language has been changed to clarify that, in extraordinary circumstances, the Director also may extend or modify any deadlines set by the panel.

- **Rule 12211 (Direct Communication Between Parties and Arbitrators).** On June 30, 2004, the SEC approved a proposed rule change to permit parties in an arbitration to communicate directly with the arbitrators if all parties and arbitrators agree, and to establish guidelines for such direct communication.⁶ The approved rule language has been included in this Amendment. The remaining rules in this section have been re-numbered.

- **Rule 12213 (Hearing Locations) and Rule 12214 (Payment of Arbitrators).** On March 7, 2005, the SEC approved a proposed rule change to permit arbitrations to occur in a foreign hearing location, and to allow the Director to authorize a higher or additional honorarium for the use of the foreign hearing location.⁷ The relevant portion of the approved rule language has been included in these rules.

⁵ See note 4 above.

⁶ See Securities Exchange Act Rel. No. 34-49950, 69 FR 41321 (June 30, 2004).

⁷ See Securities Exchange Act Rel. No. 34-51324, 70 FR 12257 (March 11, 2005)

- **Rules 12302(a) (Filing an Initial Statement of Claim) and (b) (Number of Copies).** On June 16, 2004, the SEC approved a proposed rule change to allow parties to complete part of the arbitration claim filing process through the Internet.⁸ The relevant portion of the approved rule language has been included in these rules.
- **Rule 12312(b) (Multiple Claimants).** The language has been changed to clarify when the Director may separate claims into two or more arbitrations.
- **Rule 12313(b) (Multiple Respondents).** The language has been changed to clarify when the Director may separate claims into two or more arbitrations.
- **Rule 12407(b) (Additional Parties).** The rule has been modified to clarify how a new party may be added to the arbitration, and to explain the rights of the party to be added under the rule.
- **Rule 12408(a) (Disclosures Required of Arbitrators).** This rule has been amended to incorporate the disclosure requirement of new IM-10308 on mediators serving as arbitrators, which the SEC approved on March 7, 2005.⁹
- **Rule 12410(a)(1) (Before First Hearing Session Begins).** The rule has been modified to clarify that an arbitrator will be removed for having an interest in the outcome of the arbitration that is either direct or indirect.
- **Rule 12506 (Document Production Lists).** Paragraph (c) has been added to this rule to include language from the Discovery Guide that was inadvertently omitted.
- **Rule 12600(b) (Required Hearings).** The rule has been modified to specify when the panel will decide the time and date of the hearing.
- **Rule 12603 (Failure to Appear).** The rule has been modified to clarify that the panel determines whether the hearing may proceed in the event a party fails to appear.
- **Rule 12800(b) (Single Arbitrator).** The rule has been modified to give the parties the option of selecting a non-public arbitrator to decide the arbitration.
- **Rules 12900(a), (b), and (c) (Fees Due When a Claim is Filed).** The rules have been modified to reinstate the \$.01-\$1,000 bracket for filing fees.

⁸ See Securities Exchange Act Rel. No. 34-49876, 69 FR 35090 (June 16, 2004).

⁹ See note 4 above.

- **Rule 12901(a)(2) (Member Surcharge).** The rule has been modified to clarify the minimum surcharge amount that the Director may assess.
- **Rule 12902(d) (Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal).** The second bullet has been modified to clarify when NASD must receive notice of settlement or withdrawal for the parties to be entitled to a refund. The third bullet has been modified to clarify that Rule 12701(b) applies to withdrawn cases as well.
- **Rule 12904(f) (Awards).** The rule has been modified to allow a panel to include in the award a rationale underlying the award. As a result of this new language, the subsequent provisions were re-lettered.

Other technical changes were made to the proposed Code to correct typographical errors, other nonsubstantive errors, and redundant references. For example, the word “calendar” was removed, where appropriate, because the term “day” is defined as calendar day. Also, references to “deposits” or “hearing session deposits” were removed because the proposed Code requires that one filing fee be submitted when a claim is filed; a hearing session deposit is no longer required.

NASD
CODE OF ARBITRATION PROCEDURE
FOR
CUSTOMER DISPUTES

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[NOTICE TO PARTIES] PART 1 [Interpretive Material] INTERPRETIVE MATERIAL, DEFINITIONS, ORGANIZATION AND AUTHORITY

[NASD IM 10100:] IM 12000. Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

- (a) fail to submit a dispute for arbitration under the NASD Code of Arbitration Procedure ("Code") as required by the Code;
- (b) fail to comply with any injunctive order issued pursuant to the Code;
- (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;
- (d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law;
- (e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD;
- (f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are:
 - (1) customers with a claim against a member or an associated person;
 - (2) associated persons with a claim against a member or an associated person;
 - (3) members with a claim against another member; or
 - (4) members with a claim against an associated person that relates exclusively to a promissory note.

Written waiver by such parties shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This paragraph applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing

party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure.

[PART I DEFINITIONS, ORGANIZATION AND AUTHORITY]

12100. Definitions

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.

(a) Associated Person

The term "associated person" or "associated person of a member" means a person associated with a member, as that term is defined in paragraph (p).

(b) Board

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

(c) Claim

The term "claim" means an allegation or request for relief.

(d) Claimant

The term "claimant" means a party that files the statement of claim that initiates an arbitration under Rule 12302.

(e) Code

The term "Code" means the Code of Arbitration Procedure for Customer Disputes. For disputes involving only industry parties, see the NASD Code of Arbitration Procedure for Industry Disputes.

(f) Counterclaim

The term "counterclaim" means a claim asserted against a claimant by a respondent.

(g) Cross Claim

The term "cross claim" means a claim asserted by a respondent against another already-named respondent.

(h) Day

Except as otherwise provided, the term “day” means calendar day. If a deadline specified in the Code falls on a Saturday, Sunday or any NASD holiday, the deadline is extended until the next business day.

(i) Director

The term “Director” means the Director of NASD Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes NASD staff to whom the Director has delegated authority.

(j) Dispute

The term “dispute” means a dispute, claim or controversy. A dispute may consist of one or more claims.

(k) Hearing

The term “hearing” means the hearing on the merits of an arbitration under Rule 12600.

(l) Hearing Session

The term “hearing session” means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference.

(m) Member

For purposes of the Code, the term “member” means any broker or dealer admitted to membership in NASD, whether or not the membership has been terminated or cancelled.

(n) Non-Public Arbitrator

The term “non-public arbitrator” means a person who is otherwise qualified to serve as an arbitrator and:

(1) Is or, within the past five years, was:

(A) Associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(B) Registered under the Commodity Exchange Act;

(C) A member of a commodities exchange or a registered futures association; or

(D) Associated with a person or firm registered under the Commodity Exchange Act;

(2) Is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (n)(1);

(3) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (n)(1); or

(4) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

For purposes of this rule, the term "professional work" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(o) Panel

The term "panel" means the arbitration panel, whether it consists of one or more arbitrators.

(p) Person Associated with a Member

The term "person associated with a member" means:

(1) A natural person registered under the Rules of NASD; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with NASD under the By-Laws or the Rules of NASD.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

(q) Prehearing Conference

The term "prehearing conference" means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins.

(r) Public Arbitrator

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) Is not engaged in the conduct or activities described in paragraphs (n)(1)-(4);

(2) Was not engaged in the conduct or activities described in paragraphs (n)(1)-(4) for a total of 20 years or more;

(3) Is not an investment adviser;

(4) Is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (n)(1)-(4); and

(5) Is not the spouse or a family member of a person who is engaged in the conduct or activities described in paragraphs (n)(1)-(4). For the purposes of this [R]rule, the term "family member" means:

(A) The parent, stepparent, child, or stepchild of any person engaged in the conduct or activities described in paragraphs (n)(1)-(4);

(B) A member of the household of a person engaged in the conduct or activities described in paragraphs (n)(1)-(4);

(C) A person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (n)(1)-(4); or

(D) A person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (n)(1)-(4).

For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(s) Respondent

The term "respondent" means a party against whom a statement of claim or third party claim has been filed.

(t) Statement of Claim

The term "statement of claim" means the initial or amended claim filed by the party or parties initiating the arbitration.

(u) Third Party Claim

The term "third party claim" means a claim asserted against a party not named in the statement of claim or any other previous pleading.

(v) Uniform Submission Agreement

The term "Uniform Submission Agreement" means the NASD Uniform Submission Agreement. The NASD Uniform Submission Agreement is a document that

parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

12101. Applicability of Code and Incorporation by Reference

(a) Applicability of Code

The Code applies to any dispute between a customer and a member or associated person of a member that is submitted to arbitration under Rule 12200 or 12201.

(b) Incorporation by Reference

When a dispute is submitted to arbitration under the Code pursuant to an arbitration agreement, the Code is incorporated by reference into the agreement.

12102. National Arbitration and Mediation Committee

(a) Pursuant to Part V(C)(1)(b) of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan"), 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) Pursuant to the Delegation Plan, 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] quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. 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.

12103. Director of Dispute Resolution

(a) The Board shall appoint a Director of Dispute Resolution. The Director shall perform all the administrative duties relating to arbitrations submitted under the Code.

The Director may delegate his or her duties when it is appropriate, unless the Code provides otherwise.

(b) The Director shall consult with the NAMC at the NAMC's request.

(c) The President of NASD Dispute Resolution may perform the Director's duties. If the Director is unable to perform his or her duties, the President of NASD Dispute Resolution may appoint an interim Director.

12104. Effect of Arbitration on NASD Regulatory Activities

(a) Submitting a dispute to arbitration under the Code does not limit or preclude any right, action or determination by NASD that it would otherwise be authorized to adopt, administer or enforce.

(b) Only at the conclusion of an arbitration, any arbitrator may refer to NASD for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD's rules, the federal securities laws, or other applicable rules or laws.

12105. Agreement of the Parties

(a) Except as provided in paragraph (b), if the Code provides that the parties may agree to modify a provision of the Code, or a decision of the Director or the panel, the written agreement of all named parties is required.

(b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive.

PART II GENERAL ARBITRATION RULES

12200. Arbitration Under an Arbitration Agreement or the Rules of NASD

Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:
 - (1) Required by a written agreement; or
 - (2) Requested by the customer.
- The dispute is between a customer and a member or associated person of a member; and
- The dispute arises in connection with the business activities of the member or the associated person, except the insurance business activities of a member that is also an insurance company.

12201. Elective Arbitration

Parties may arbitrate a dispute under the Code if:

- The parties agree in writing to submit the dispute to arbitration under the Code after the dispute arises; and
- The dispute is between a customer and a member, associated person of a member, or other related party; and
- The dispute arises in connection with the business activities of a member or an associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

12202. Claims Against Inactive Members

A claim by or against a member in one of the following categories is ineligible for arbitration under the Code unless the customer agrees in writing to arbitrate after the claim arises:

- A member whose membership is terminated, suspended, cancelled or revoked;
- A member that has been expelled from NASD; or
- A member that is otherwise defunct.

12203. Denial of NASD Forum and Referral to Other Forums

(a) The Director may decline to permit the use of the NASD arbitration forum if the Director determines that, given the purposes of NASD and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health and safety of arbitrators, staff, or parties or their representatives. Only the Director or the President of NASD Dispute Resolution may exercise the Director's authority under this Rule.

(b) Disputes that arise out of transactions in a readily identifiable market may be referred to the arbitration forum for that market, if the claimant agrees.

12204. Class Action Claims

(a) Class action claims may not be arbitrated under the Code.

(b) No claim that is included in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, will be arbitrated under the Code, unless the party bringing the claim shows that it is not participating in the class action, or has withdrawn from the class according to conditions set by the court, if any.

(c) The Director will refer to a panel any dispute as to whether a claim is part of a class action, unless a party asks the court hearing the class action to resolve the dispute within 10 days of receiving notice that the Director has decided to refer the dispute to a panel.

(d) A member or associated person may not enforce any arbitration agreement against a member of a certified or putative class action with respect to any claim that is the subject of the certified or putative class action until:

- The class certification is denied;
- The class is decertified;
- The member of the certified or putative class is excluded from the class by the court; or
- The member of the certified or putative class elects not to participate in the class or withdraws from the class according to conditions set by the court, if any.

This paragraph does not otherwise affect the enforceability of any rights under the Code or any other agreement.

12205. Shareholder Derivative Actions

Shareholder derivative actions may not be arbitrated under the Code.

12206. Time Limits

(a) Time Limitation on Submission of Claims

No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations. However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while NASD retains jurisdiction of the claim.

(d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration

If a party submits a claim to a court of competent jurisdiction, the six-year time limitation will not run while the court retains jurisdiction of the claim matter.

12207. Extension of Deadlines

(a) The parties may agree in writing to extend or modify any deadline for:

- Serving an answer;
- Returning arbitrator or chairperson lists;
- Responding to motions; or
- Exchanging documents or witness lists.

If the parties agree to extend or modify a deadline under this rule, they must notify the Director of the new deadline in writing.

(b) The panel may extend or modify any deadline listed in paragraph (a), or any other deadline set by the panel, either on its own initiative or upon motion of a party.

(c) The Director may extend or modify any deadline or time period set by the Code for good cause. The Director may also extend or modify any deadline or time period set by the panel in extraordinary circumstances.

12208. Representation of Parties

All parties have the right to be represented by counsel during any stage of an arbitration.

12209. Legal Proceedings

During an arbitration, no party may bring any suit, legal action, or proceeding against any other party that concerns or that would resolve any of the matters raised in the arbitration.

12210. Ex Parte Communications

(a) Except as provided in Rule 12211, no party, or anyone acting on behalf of a party, may communicate with any arbitrator outside of a scheduled hearing or conference regarding an arbitration unless all parties or their representatives are present.

(b) No party, or anyone acting on behalf of a party, may send or give any written motion, request, submission or other materials directly to any arbitrator, unless the arbitrators and the parties agree, or the Code provides otherwise.

12211. Direct Communication Between Parties and Arbitrators

(a) This rule provides procedures under which parties and arbitrators may communicate directly.

(b) Only parties that are represented by counsel may use direct communication under this rule. If, during the proceeding, a party chooses to appear *pro se* (without counsel), this rule shall no longer apply.

(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.

(d) Parties may send the arbitrators only items that are listed in an order.

(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.

(f) Copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.

(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.

(h) Parties may not communicate orally with any of the arbitrators outside the presence of all parties.

(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.

12212. Sanctions

(a) The panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel. Unless prohibited by applicable law, sanctions may include, but are not limited to:

- Assessing monetary penalties payable to one or more parties;
- Precluding a party from presenting evidence;
- Making an adverse inference against a party;
- Assessing postponement and/or forum fees; and
- Assessing attorneys' fees, costs and expenses.

(b) The panel may initiate a disciplinary referral at the conclusion of an arbitration.

(c) The panel may dismiss a claim, defense or arbitration with prejudice as a sanction for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective.

12213. Hearing Locations

(a) U.S. Hearing Location

(1) The Director will decide which of NASD's hearing locations will be the hearing location for the arbitration. Generally, the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute.

(2) [(b)] Before arbitrator lists are sent to the parties under Rule 12403, the parties may agree in writing to a hearing location other than the one selected by the Director.

(3) [(c)] The Director may change the hearing location upon motion of a party, as set forth in Rule 12503.

(b) Foreign Hearing Location

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met NASD background qualifications for arbitrators;

(B) received training on NASD arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rule 12900(d).

12214. Payment of Arbitrators

(a) Except as provided in paragraph (b) and Rule 12800, NASD will pay the panel an honorarium, as follows:

- \$200 to each arbitrator for each hearing session in which he or she participates; and
- An additional \$75 per day to the chairperson for each hearing on the merits.

(b) The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

PART III INITIATING AND RESPONDING TO CLAIMS

12300. Filing and Serving Documents

(a) Initial statements of claim must be filed with the Director, with enough copies for each other party and each arbitrator. The number of arbitrators is determined in accordance with Rule 12401. The Director will serve the statement of claim on the other parties, and send copies of the statement of claim to each arbitrator.

(b) The parties must serve all other pleadings and other documents directly on each other party. Parties must serve all pleadings on all parties at the same time and in the same manner, unless the parties agree otherwise.

(c) Unless the Code provides otherwise, parties must also file all pleadings and other documents with the Director, with additional copies for each arbitrator. Pleadings and other documents must be filed with the Director at the same time and in the same manner in which they are served on the other parties. Parties filing pleadings and other documents with the Director must include a certificate of service stating the names of the parties served, the date and method of service, and the address(es) to which service was made.

(d) Pleadings and other documents may be filed and served by: first class mail; overnight mail or delivery service; hand delivery; facsimile; or any other method, including electronic mail, that is approved or required by the panel.

(e) Filing and service are accomplished on the date of mailing either by first-class postage prepaid mail or overnight mail service, or, in the case of other means of service, on the date of delivery. Whenever pleadings and other documents must be filed with the Director and served on the other parties, filing and service must occur on the same day and in the same manner, unless the parties agree or the panel directs otherwise.

(f) A party must inform the Director and all other parties in writing of any change of address during an arbitration.

12301. Service on Persons Currently Associated with a Member

If a member and a person currently associated with the member are named as respondents to the same arbitration, service on the person associated with the member may be made on the member or directly on the associated person. If service is made on the member, the member must serve the associated person, even if the member will not be representing the associated person in the arbitration. If the member is not representing the associated person in the arbitration, the member must notify, and provide the associated person's current address to, all parties and the Director.

12302. Filing an Initial Statement of Claim

(a) Filing Claim with the Director

(1) To initiate an arbitration, a claimant must file the following with the Director:

- Signed and dated Uniform Submission Agreement; and
- A statement of claim specifying the relevant facts and remedies requested.

The claimant may include any additional documents supporting the statement of claim.

(2) A claimant may use the online claim notification and filing procedure to complete part of the arbitration claim filing process through the Internet. To commence this process, a claimant may complete a Claim Information Form that can be accessed through www.nasd.com. In completing the Claim Information Form, the claimant may attach an electronic version of the statement of claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, an NASD Dispute Resolution Tracking Form will be generated and displayed for the claimant to reproduce as necessary. The claimant shall then file with the Director the rest of the materials required in subparagraph (1) of the rule, along with a hard copy of the NASD Dispute Resolution Tracking Form.

(b) Number of Copies

The claimant must file enough copies of the statement of claim, if it has not been submitted electronically, and the signed Uniform Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.

(c) Fees

At the time the statement of claim is filed, the claimant must pay all required filing fees.

(d) Service by Director

Unless the statement of claim is deficient under Rule 12307, the Director will send a copy of the Uniform Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.

12303. Answering the Statement of Claim

(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:

- Signed and dated Uniform Submission Agreement; and
- An answer specifying the relevant facts and available defenses to the statement of claim.

The respondent may include any additional documents supporting the answer to the statement of claim. Parties that fail to answer in the time provided may be subject to default proceedings under Rule 12801.

(b) The answer to the statement of claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director.

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the Uniform Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with enough copies for the Director and each arbitrator.

(d) If the answer to the statement of claim contains any counterclaims, cross claims or third party claims, the respondent must pay all required filing fees.

12304. Answering Counterclaims

(a) A claimant must directly serve any answer to a counterclaim on each other party within 20 days of receipt of the counterclaim. At the same time, the claimant must file the answer to the counterclaim with the Director with additional copies for each arbitrator.

(b) The answer must include the relevant facts and available defenses to the counterclaim. The claimant may include any additional documents supporting the answer to the counterclaim.

12305. Answering Cross Claims

(a) A respondent must directly serve an answer to a cross claim on each other party within 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim, whichever is later. At the same time, the respondent must file the answer to the cross claim with the Director with additional copies for each arbitrator.

(b) The answer must include the relevant facts and available defenses to the cross claim. The respondent may include any additional documents supporting the answer to the cross claim.

12306. Answering Third Party Claims

(a) A party responding to a third party claim must directly serve all other parties with the following documents within 45 days of receipt of the third party claim:

- Signed and dated Uniform Submission Agreement; and
- An answer specifying the relevant facts and available defenses to the third party claim.

The respondent may include any additional documents supporting the answer to the third party claim.

(b) The answer to the third party claim may also include any counterclaims, cross claims, or third party claims, specifying all relevant facts and remedies requested. The answer may also include any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director.

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the Uniform Submission Agreement, the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator.

(d) If the answer to the third party claim contains any counterclaim, cross claim or third party claim, the party must also pay all required filing fees.

12307. Deficient Claims

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- A Uniform Submission Agreement was not filed by each claimant;
- The Uniform Submission Agreement was not properly signed and dated;

- The Uniform Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the Uniform Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;
- The claim does not specify the customer's home address at the time of the events giving rise to the dispute;
- The claim does not specify the claimant's or the claimant's representative's current address; or
- The claimant did not pay all required filing fees, unless the Director deferred the fees.

(b) The Director will notify the claimant in writing if the claim is deficient. If all deficiencies are not corrected within 30 days from the time the claimant receives notice, the Director will close the case without serving the claim, and will not refund any filing fees paid by the claimant.

(c) The panel will not consider any counterclaim, cross claim or third party claim that is deficient. The reasons a counterclaim, cross claim or third party claim may be deficient include the reasons listed in paragraph (a). The Director will notify the party making the counterclaim, cross claim or third party claim of the any deficiencies in writing. If all deficiencies are not corrected within 30 days from the time the party making the counterclaim, cross claim or third party claim receives notice of the deficiency, the panel will proceed with the arbitration as though the deficient counterclaim, cross claim or third party claim had not been made.

12308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party fails to answer any claim within the time period specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under Rule 12801.

(b) If a party answers a claim that alleges specific facts and contentions with a general denial, or fails to include defenses or relevant facts in its answer that were known to it at the time the answer was filed, the panel may bar that party from presenting the omitted defenses or facts at the hearing.

12309. Amending Pleadings

(a) Before Panel Appointment

Except as provided in paragraph (c), a party may amend a pleading at any time before the panel has been appointed.

(1) To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rule 12301.

(2) To amend any other pleading, a party must serve the amended pleading on each party. At the same time, the party must file the amended pleading with the Director, with additional copies for each arbitrator. If a pleading is amended to add a party to the arbitration, the party amending the pleading must provide each new party with copies of all documents previously served by any party, or sent to the parties by the Director.

(b) After Panel Appointment

Once a panel has been appointed, a party may only amend a pleading if the panel grants a motion to amend in accordance with Rule 12503. Motions to amend a pleading must include a copy of the proposed amended pleading. If the panel grants the motion to amend, the amended pleading does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise.

(c) Amendments to Add Parties

Once the ranked arbitrator lists are due to the Director under Rule 12404(c), no party may amend a pleading to add a new party to the arbitration until a panel has been appointed and the panel grants a motion to add the party. Motions to add a party after panel appointment must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code.

12310. Answering Amended Claims

(a) If a claim is amended before it has been answered, the respondent's original time to answer is extended by 20 days.

(b) If a claim is amended after it has been answered, but before a panel has been appointed, the respondent has 20 days from the time the amended claim is served to serve an amended answer.

(c) If a claim is amended after a panel has been appointed, the respondent has 20 days from the time the respondent receives notice that the panel has granted the motion to amend the claim to serve an amended answer.

(d) The amended answer must be directly served on each other party. At the same time, the amended answer must also be filed with the Director, with additional copies for each arbitrator.

(e) If the amended claim adds a new party to the arbitration, the new party's answer is governed by Rule 12306.

12311. Amendments to Amount in Dispute

If an amended pleading increases the amount in dispute, all filing fees, surcharges and process fees required by the Code will be recalculated based on the new amount in dispute.

12312. Multiple Claimants

(a) One or more parties may join multiple claims together if the claims contain common questions of law or fact and:

- The claims assert any right to relief jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this [R]rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed.

12313. Multiple Respondents

(a) One or more parties may name one or more respondents in the same arbitration if the claims contain any questions of law or fact common to all respondents and:

- The claims are asserted against the respondents jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this [R]rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed.

12314. Combining Claims

Before ranked arbitrator lists are due to the Director under Rule 12404(c), the Director may combine separate but related claims into one arbitration. Once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.

PART IV APPOINTMENT, DISQUALIFICATION, AND AUTHORITY OF ARBITRATORS

12400. Neutral List Selection System and Arbitrator Rosters

(a) Neutral List Selection System

The Neutral List Selection System is a computer system that generates, on a random basis, lists of arbitrators from NASD's rosters of arbitrators for the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the Neutral List Selection System.

(b) Arbitrators Rosters

NASD maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in Rule 12100(n);
- A roster of public arbitrators as defined in Rule 12100(r); and
- A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c).

(c) Eligibility for Chairperson Roster

In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by NASD or have substantially equivalent training or experience and:

- Have a law degree and are 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.

12401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To \$50,000

If the amount of a claim is more than \$25,000 but not more than \$50,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless any party requests a panel of three arbitrators.

(c) Claims of More Than \$50,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$50,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

12402. Composition of Arbitration Panels

(a) If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster, unless the parties agree in writing otherwise.

(b) If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators, one of whom will be selected from the chairperson roster, unless the parties agree in writing otherwise.

12403. Generating and Sending Lists to the Parties

(a) Generating Lists

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of seven public arbitrators from the NASD's chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of seven arbitrators from the NASD's non-public arbitrator roster;
- A list of seven arbitrators from the NASD's public arbitrator roster; and
- A list of seven public arbitrators from the NASD's chairperson roster.

(3) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(b) Sending Lists to Parties

(1) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past ten years and other background information for each arbitrator listed.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12404(c).

12404. Striking and Ranking Arbitrators

(a) Each separately represented party may strike up to five of the arbitrators from each list for any reason by crossing through the names of the arbitrators. Two names must remain on each list.

(b) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately.

(c) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.

12405. Combining Lists

For each arbitrator classification (public, non-public, and chairperson), the Director will prepare combined ranked lists of arbitrators based on the parties' numerical rankings, as follows:

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.
- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.
- The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

(a) If the panel consists of one arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined chairperson list.

(b) If the panel consists of three arbitrators, the Director will appoint:

- The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;
- The highest-ranked available public arbitrator from the combined public arbitrator list, and
- The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

(c) If the number of arbitrators available to serve from the combined list(s) is not sufficient to fill an initial panel, the Director will appoint one or more arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in Rule 12100(n)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 12403 and the parties will have the right to challenge the arbitrators as provided in Rule 12410.

(d) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute NASD's arbitrator oath or affirmation.

12407. Additional Parties

(a) If a party is added to an arbitration after the Director sends the lists generated by the Neutral List Selection System to the parties, but before parties must return the ranked lists to the Director, the Director will send the lists to the newly added party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike the arbitrators in accordance with Rule 12404. If the newly added party returns the lists within 20 days after the date upon which the Director sent the lists to the party, the Director will include the new party's lists when combining rankings under Rule 12405. If the Director does not receive the list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preference among the listed arbitrators.

(b) Once the ranked lists are due to the Director under Rule 12404, no party may amend a pleading to add a new party to the arbitration until a panel is appointed and grants a motion to add the party. Motions to add a party must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. If the panel grants the motion to add the party, the newly added party may not strike and

rank the arbitrators, but may challenge an arbitrator for cause in accordance with Rule 12410.

12408. Disclosures Required of Arbitrators

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; [and]

(3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates[.]; and

(4) Any existing or past service as a mediator.

(b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(c) The Director will inform the parties to the arbitration of any information disclosed to the Director under this Rule unless the arbitrator who disclosed the information declines appointment or voluntarily withdraws from the panel as soon as the arbitrator learns of any interest, relationship or circumstance that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.

12409. Arbitrator Recusal

Any party may ask an arbitrator to recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.

12410. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this Rule will be resolved in favor of the customer.

(2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator.

(b) After First Hearing Session Begins

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 12408 that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of NASD Dispute Resolution may exercise the Director's authority under this paragraph (b).

12411. Replacement of Arbitrators

(a) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this Rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(b) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator of the required classification remaining on the combined list.

(c) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the required classification to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403, and the parties shall have the right to object to the arbitrator as provided in Rule 12410.

(d) If the Director must appoint a non-public arbitrator under paragraph (c), the Director may not appoint a non-public arbitrator as defined in Rule 12100(n)(2) or (3), unless the parties agree otherwise.

12412. Director's Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations.

12413. Jurisdiction of Panel and Authority to Interpret the Code

The panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties.

12414. Determinations of Arbitration Panel

All rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or the Code or applicable law provides, otherwise.

PART V PREHEARING PROCEDURES AND DISCOVERY

12500. Initial Prehearing Conference

(a) After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel, except as provided in paragraph (c) of this Rule.

(b) The Initial Prehearing Conference will generally be held by telephone. Unless the parties agree otherwise, the Director must notify each party of the time and place of the Initial Prehearing Conference at least 20 days before it takes place.

(c) At the Initial Prehearing Conference, the panel will set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters. The parties may agree to forgo the Initial Prehearing Conference only if they jointly provide the Director with the following information, in writing, with additional copies for each arbitrator, before the Initial Prehearing Conference is scheduled to be held:

- A statement that the parties accept the panel;
- Whether any other prehearing conferences will be held, and if so, for each prehearing conference, a minimum of four mutually agreeable dates and times, and whether the chairperson or the full panel will preside;
- A minimum of four sets of mutually agreeable hearing dates;
- A discovery schedule;
- A list of all anticipated motions, with filing and response due dates; and
- A determination regarding whether briefs will be submitted, and, if so, the due date for the briefs and any reply briefs.

12501. Other Prehearing Conferences

(a) At a party's request, or at the discretion of the panel, the panel may schedule one or more additional prehearing conferences regarding any outstanding preliminary matters, including:

- Discovery disputes;
- Motions;
- Witness lists and subpoenas;
- Stipulations of fact;
- Unresolved scheduling issues;

- Contested issues on which the parties will submit briefs; and
- Any other matter that will simplify or expedite the arbitration.

(b) The panel will determine the time and place of any additional prehearing conferences. Prehearing conferences will generally be held by telephone. Unless the full panel is required under Rule 12503, prehearing conferences may be held before a single arbitrator, generally the chairperson.

12502. Recording Prehearing Conferences

(a) Except as provided in Rule 12504, prehearing conferences will not be tape-recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party.

(b) If a prehearing conference is tape-recorded, the Director will provide a copy of the tape to any party upon request for a nominal fee.

12503. Motions

(a) Motions

(1) A party may make motions in writing, or orally during any hearing session. Before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. Every motion, whether written or oral, must include a description of the efforts made by the moving party to resolve the matter before making the motion.

(2) Written motions are not required to be in any particular form, and may take the form of a letter, legal motion, or any other form that the panel decides is acceptable. Written motions must be served directly on each other party, at the same time and in the same manner. Written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

(3) Except as provided by Rule 12504, written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise.

(4) Motions to amend a pleading after panel appointment pursuant to Rule 12309(b) must be accompanied by copies of the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. If a party moves to amend a pleading to add a party, the motion must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with paragraph Rule 12309(c) without waiving any rights or objections under the Code.

(b) Responding to Motions

Except as provided by Rule 12504, parties have 10 days from the receipt of a written motion to respond to the motion, unless the moving party agrees to an extension of time, or the Director or the panel decides otherwise. Responses to written motions must be served directly on each other party, at the same time and in the same manner. Responses to written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

(c) Authority to Decide Motions

(1) The Director decides motions relating to use of the forum under Rule 12203 and removal of an arbitrator under Rule 12410.

(2) Motions relating to combining or separating claims or arbitrations, or changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed.

(3) Discovery-related motions are decided by one arbitrator, generally the chairperson. The arbitrator may refer such motions to the full panel either at his or her own initiative, or at the request of a party. The arbitrator must refer motions relating to privilege to the full panel at the request of a party.

(4) Motions for arbitrator recusal under Rule 12409 are decided by the arbitrator who is the subject of the request.

(5) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 12206, or to decide a claim or arbitration before a hearing under Rule 12504, unless the Code provides or the parties agree otherwise.

12504. Motions to Decide Claims Before a Hearing on the Merits

(a) Except as provided in Rule 12206, motions to decide a claim before a hearing are discouraged and may only be granted in extraordinary circumstances.

(b) Motions under this rule must be made in writing. Unless the parties agree or the panel determines otherwise, motions under this rule must be served at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion.

(c) Motions under this rule will be decided by the full panel. The panel may not grant a motion under this rule unless a prehearing conference on the motion is held, or waived by the parties. Prehearing conferences to consider motions under this rule will be tape-recorded.

(d) The panel may issue sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.

12505. Cooperation of Parties in Discovery

The parties must cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration.

12506. Document Production Lists

(a) Applicability of Document Production Lists

When the Director serves the statement of claim, the Director will provide the NASD Discovery Guide and Document Production Lists to the parties. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person. Other Document Production Lists may also apply, depending on the specific cause(s) of action alleged.

(b) Time for Responding to Document Production Lists

Unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either:

- Produce to all other parties all documents in their possession or control that are described in the Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged;
- Identify and explain the reason that specific documents described in Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged, cannot be produced within the required time, and state when the documents will be produced; or
- Object as provided in Rule 12508.

(c) Redacted Information

For purposes of this rule and Rule 12507, if a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled "redacted."

12507. Other Discovery Requests

(a) Making Other Discovery Requests

Parties may also request additional documents or information from any party by serving a written request directly on the party. Such requests may be served:

- On the claimant, or any respondent named in the initial statement of claim, 45 days or more after the Director serves the statement of claim; and
- On any party subsequently added to the arbitration, 45 days or more after the statement of claim is served on that party.

At the same time, the party must serve copies of the request on all other parties. Any request for documents or information not described in applicable Document Production Lists should be specific and relate to the matter in controversy.

(b) Responding to Other Discovery Requests

Unless the parties agree otherwise, within 60 days from the date a discovery request other than the Document Production Lists is received, the party receiving the request must either:

- Produce the requested documents or information to all other parties;
- Identify and explain the reason that specific requested documents or information cannot be produced within the required time, and state when the documents will be produced; or
- Object as provided in Rule 12508.

12508. Objecting to Discovery; Waiver of Objection

(a) If a party objects to producing any document described in Document Production Lists 1 or 2, any other applicable Document Production List, or any document or information requested under Rule 12507, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties at the same time and in the same manner. Objections should not be filed with the Director. Parties must produce all applicable listed documents, or other requested documents or information not specified in the objection.

(b) Any objection not made within the required time is waived unless the panel determines that the party had substantial justification for failing to make the objection within the required time.

12509. Motions to Compel Discovery

(a) A party may make a motion asking the panel to order another party to produce documents or information if another party has:

- Failed to comply with Rule 12506 or 12507; or
- Objected to the production of documents or information under Rule 12508.

(b) Motions to compel discovery must be made, and will be decided, in accordance with Rule 12503. Such motions must include the disputed document request or list, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.

12510. Depositions

Depositions are strongly discouraged in arbitration. Upon motion of a party, the panel may permit depositions, but only under very limited circumstances, including:

- To preserve the testimony of ill or dying witnesses;
- To accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing;
- To expedite large or complex cases; and
- If the panel determines that extraordinary circumstances exist.

12511. Discovery Sanctions

(a) Failure to cooperate in the exchange of documents and information as required under the Code may result in sanctions. The panel may issue sanctions against any party in accordance with Rule [12211] 12212(a) for:

- Failing to comply with the discovery provisions of the Code, unless the panel determines that there is substantial justification for the failure to comply; or
- Frivolously objecting to the production of requested documents or information.

(b) The panel may dismiss a claim, defense or proceeding with prejudice in accordance with Rule [12211] 12212(c) for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.

12512. Subpoenas

(a) To the extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. Subpoenas for documents or the appearance of witnesses may be issued as provided by law.

(b) If a subpoena is issued, the issuing party must send copies of the subpoena to all other parties at the same time and in the same manner in which the subpoena was issued.

12513. Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas

(a) Upon motion of a party, the panel may order the following without the use of subpoenas:

- The appearance of any employee or associated person of a member of NASD; or
- The production of any documents in the possession or control of such persons or members.

(b) Unless the panel directs otherwise, the party requesting the appearance of witnesses by, or the production of documents from, non-parties under this rule shall pay the reasonable costs of the appearance and/or production.

12514. Exchange of Documents and Witness Lists Before Hearing

(a) Documents and Other Materials

At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing.

(b) Witness Lists

At least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. At the same time, each party must file their witness lists with the Director, with enough copies for each arbitrator.

(c) Exclusion of Documents or Witnesses

Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with this rule at the hearing, unless the panel determines that good cause exists for the failure to produce the document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing.

PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD

12600. Required Hearings

(a) Hearings will be held, unless:

- The arbitration is administered under Rule 12800 or Rule 12801;
- The parties agree otherwise in writing; or
- The arbitration has been settled, withdrawn or dismissed.

(b) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner.

(c) The Director will notify the parties of the time and place at least 10 days before the hearing begins, unless the parties agree to a shorter time.

12601. Postponement of Hearings

(a) When a Hearing May Be Postponed

A hearing may be postponed only:

- By agreement of the parties;
- By the Director, in extraordinary circumstances;
- By the panel, in its own discretion; or
- By the panel, upon motion of a party. The panel may not grant a motion to postpone a hearing made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists.

(b) Postponement Fees

(1) Except as otherwise provided, a postponement fee will be charged for each postponement agreed to by the parties, or granted upon request of one or more parties. The fee will equal the applicable hearing session fee under Rule 12902. The panel may allocate the fee among the party or parties that agreed to or requested the postponement. The panel may also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement. The panel may waive the fees.

(2) No postponement fee will be charged if a hearing is postponed:

- Because the parties agree to submit the matter to mediation at NASD;
- By the panel in its own discretion; or
- By the Director in extraordinary circumstances.

(c) Dismissal of Arbitration Due to Multiple Postponements

If all parties jointly request, or agree to, more than two postponements, the panel may dismiss the arbitration without prejudice.

12602. Attendance at Hearings

The parties and their representatives are entitled to attend all hearings. The panel will decide who else may attend any or all of the hearings.

12603. Failure to Appear

If a party fails to appear at a hearing after having been notified of the time, date and place of the hearing, the panel may determine that the hearing may go forward, and may render an award as though all parties had been present.

12604. Evidence

(a) The panel will decide what evidence to admit. The panel is not required to follow state or federal rules of evidence.

(b) Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

12605. Witness Oath

All witnesses must testify under oath or affirmation.

12606. Record of Proceedings

(a) Tape Recording

(1) Except as provided in paragraph (b), the Director will make a tape recording of every hearing. The Director will provide a copy of the tape to any party upon request for a nominal fee.

(2) The panel may order the parties to provide a transcription of the tape recording. If the panel orders a transcription, copies of the transcription must be provided to each arbitrator and each party. The panel will determine which party or parties must pay the cost of making the transcription and copies.

(3) The tape recording is the official record of the proceeding, even if it is transcribed.

(b) Stenographic Record

(1) Any party may make a stenographic record of the hearing. Even if a stenographic record is made, the tape recording will be the official record of the proceeding, unless the panel determines otherwise. If the panel determines in advance that the stenographic record will be the official record, the Director will not make a tape recording.

(2) If the stenographic record is the official record of the proceeding, a copy must be provided to the Director, each arbitrator, and each other party. The cost of making and copying the stenographic record will be borne by the party electing to make the stenographic record, unless the panel decides that one or more other parties should bear all or part of the costs.

12607. Order of Presentation of Evidence and Arguments

Generally, the claimant shall present its case, followed by the respondent's defense. The panel has the discretion to vary the order in which the hearing is conducted, provided that each party is given a fair opportunity to present its case.

12608. Closing the Record

(a) The panel will decide when the record is closed. Once the record is closed, no further submissions will be accepted from any party.

(b) In cases in which no hearing is held, the record is presumed to be closed when the Director sends the pleadings to the panel, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the record is presumed to be closed when the last such submission is due.

(c) In cases in which a hearing is held, the panel will generally close the record at the end of the last hearing session, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the panel will inform the parties when the submissions are due and when the record will close.

12609. Reopening the Record

The panel may reopen the record on its own initiative or upon motion of any party at any time before the award is rendered, unless prohibited by applicable law.

PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD

12700. Dismissal of Proceedings Prior to Award

(a) The panel must dismiss an arbitration or a claim at the joint request of the parties to that arbitration or claim. The dismissal will be with or without prejudice, depending on the request of the parties.

(b) The panel may dismiss a claim or an arbitration:

- Upon motion of a party under Rule 12206 or Rule 12504; or
- On its own initiative under Rule [12211] 12212(c) or Rule 12601(c).

12701. Settlement

(a) Parties to an arbitration may agree to settle their dispute at any time. Parties who settle must notify the Director. The Director will continue to administer the arbitration, and fees may continue to accrue, until the Director receives written notice of the settlement. The parties do not need to disclose the terms of the settlement agreement to the Director or to NASD Dispute Resolution, but members and associated persons may have reporting obligations under the rules of NASD.

(b) Settling parties will remain responsible for fees incurred under the Code. If parties to a settlement fail to agree on the allocation of any outstanding fees, those fees will be divided equally among the settling parties, except member surcharges and prehearing and hearing process fees required by the Code, which will remain the responsibility of the member party or parties.

12702. Withdrawal of Claims

(a) Before a claim has been answered by a party, the claimant may withdraw the claim against that party with or without prejudice.

(b) After a claim has been answered by a party, the claimant may only withdraw it against that party with prejudice unless the panel decides, or the claimant and that party agree, otherwise.

PART VIII SIMPLIFIED ARBITRATION AND DEFAULT PROCEEDINGS

12800. Simplified Arbitration

(a) Applicability of Rule

This rule applies to arbitrations involving \$25,000 or less, exclusive of interest and expenses. Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

(b) Single Arbitrator

All arbitrations administered under this rule will be decided by a single public arbitrator appointed from the NASD's chairperson roster in accordance with the Neutral List Selection System, unless the parties agree in writing otherwise.

(c) Hearings

(1) No hearing will be held in arbitrations administered under this rule unless the customer requests a hearing.

(2) If no hearing is held, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties. If a hearing is held, the regular provisions of the Code relating to prehearings and hearings, including fee provisions, will apply.

(d) Discovery and Additional Evidence

(1) Document Production Lists, described in Rule 12506, do not apply to arbitrations subject to this rule. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings.

(2) The parties may request documents and other information from each other. All requests for the production of documents and other information must be served on all other parties, and filed with the Director, within 30 days from the date that the last answer is due. Any response or objection to a discovery request must be served on all other parties and filed with the Director within 10 days of the receipt of the requests. The arbitrator will resolve any discovery disputes.

(e) Increases in Amount in Dispute

If any pleading increases the amount in dispute to more than \$25,000, the arbitration will no longer be administered under this rule, and the regular provisions of the Code will apply. If an arbitrator has been appointed, that arbitrator will remain on the panel. If a three-arbitrator panel is required or requested under Rule 12401, the remaining arbitrators will be appointed by the Director in accordance with Rule 12406(b). If no arbitrator has been appointed, the entire panel will be appointed in accordance with the Neutral List Selection System.

(f) Arbitrator Honoraria

NASD will pay the arbitrator an honorarium of \$125 for each arbitration administered under this rule.

12801. Default Proceedings

(a) Applicability of Rule

A claimant may request default proceedings against any respondent that falls within one of the following categories and fails to file an answer within the time provided by the Code.

- A member whose membership has been terminated, suspended, canceled, or revoked;
- A member that has been expelled from the NASD;
- A member that is otherwise defunct; or
- An associated person whose registration is terminated, revoked, or suspended.

(b) Initiating Default Proceedings

(1) To initiate default proceedings against one or more respondents that fail to file a timely answer, the claimant must notify the Director in writing and must send a copy of the notification to all other parties at the same time and in the same manner as the notification was sent to the Director. If there is more than one claimant, all claimants must agree in writing to proceed under this rule against a defaulting respondent before this rule may be used.

(2) If the Director receives written notice from the claimant and determines that the requirements for proceeding under this rule have been met, the Director will:

- Notify all parties that the claim against the defaulting respondent will proceed under this rule; and
- Appoint a single arbitrator in accordance with the Neutral List Selection System to consider the statement of claim and other documents presented by the claimant.

(c) Hearings

No hearing shall be held. The arbitrator may request additional information from the claimant before rendering an award.

(d) Amendments to Increase Relief Requested

Claimants may not amend a claim to increase the relief requested from the defaulting respondent after the Director has notified the parties that the claim will proceed under this rule.

(e) Awards

(1) The arbitrator may not issue an award based solely on the nonappearance of a party. Claimants must present a sufficient basis to support the making of an award. The arbitrator may not award damages in an amount greater than the damages requested in the statement of claim, and may not award any other relief that was not requested in the statement of claim.

(2) The default award shall have no effect on any non-defaulting party.

(f) Respondent's Answer

If a defaulting respondent files an answer after the Director has notified the parties that the claim against that respondent will proceed under this rule but before an award has been issued, the proceedings against that respondent under this rule will be terminated and the claim against that respondent will proceed under the regular provisions in the Code.

PART IX FEES AND AWARDS**12900. Fees Due When a Claim is Filed****(a) Fees for Claims Filed by Customers, Associated Persons and Other Non-Members**

(1) Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee in the amount indicated in the schedule below. The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 12307.

**Filing Fees for Claims Filed by Customers, Associated Persons,
and Other Non-Members**

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Filing Fee</u>
\$.01 to \$1,000	\$50
\$1,000.01 to \$2,500	\$75
\$2,500.01 to \$5,000	\$175
\$5,000.01 to \$10,000	\$325
\$10,000.01 to \$25,000	\$425
\$25,000.01 to \$50,000	\$600
\$50,000.01 to \$100,000	\$975
\$100,000.01 to \$500,000	\$1,425
\$500,000.01 to \$1 million	\$1,575
Over \$ 1 million	\$1,800
Non-Monetary/Not Specified	\$1,250

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event the amount of the filing fee may not be less than \$[75] 50 or more than \$1,800.

(b) Fees for Claims Filed by Members

(1) Members filing a claim, counterclaim, cross claim, or third party claim must pay a filing fee in the amount indicated in the schedule below. Failure to pay the required amount will result in a deficiency under Rule 12307.

Fees for Claims Filed by Members

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Filing Fee</u>
\$.01 to 1,000	\$225
\$1,000.01 to \$2,500	\$350
\$2,500.01 to \$5,000	\$525
\$5,000.01 to \$10,000	\$750
\$10,000.01 to \$25,000	\$1,050
\$25,000.01 to \$50,000	\$1,450
\$50,000.01 to \$100,000	\$1,750
\$100,000.01 to \$500,000	\$2,125
\$500,000.01 to \$1,000,000	\$2,450
\$1,000,000.01 to \$5,000,000	\$3,200
Over \$5,000,000	\$3,700
Non-Monetary/Not Specified	\$1,500

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event, the filing fee may not be less than \$[350] 225 or more than \$3,700.

(c) Partial Refund of Filing Fee

(1) If a claim is settled or withdrawn more than 10 days before the date that the hearing on the merits under Rule 12600 is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902. No refund will be paid if the NASD receives notice that a claim is settled or withdrawn within 10 days of the date that the hearing on the merits under Rule 12600 is scheduled to begin.

**Partial Refund for Settlement or Withdrawal
More Than 10 Days Before Hearing on the Merits**

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Refund</u>
\$.01 to 1,000	\$25
\$1,000.01 to \$2,500	\$50
\$2,500.01 to \$5,000	\$125
\$5,000.01 to \$10,000	\$250
\$10,000.01 to \$25,000	\$300
\$25,000.01 to \$50,000	\$450
\$50,000.01 to \$100,000	\$750
\$100,000.01 to \$500,000	\$1,125
Over \$500,000	\$1,200

Non-monetary/Not specified

\$1,000

(2) If the claim does not request or specify money damages, and the Director determines that the hearing session fee should be a different amount than the amount specified in the schedule in Rule 12902, the amount of the refund will be the amount of the hearing session fee determined by the Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902.

(d) Reimbursement of Filing Fees

In the award, the panel may order a party to reimburse another party for all or part of any filing fee paid.

12901. Member Surcharge

(a) Member Surcharge

(1) A surcharge in the amount indicated in the schedule below will be assessed against each member that:

- Files a claim, counterclaim, cross claim, or third party claim under the Code;
- Is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code; or
- Employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code.

Member Surcharge

<u>Amount in Dispute</u> (exclusive of interest and expenses)	<u>Surcharge</u>
Up to \$2,500	\$150
\$2,500.01 - \$5,000	\$200
\$5,000.01 - \$10,000	\$325
\$10,000.01 - \$25,000	\$425
\$25,000.01 - \$30,000	\$600
\$30,000.01 - \$50,000	\$875
\$50,000.01 - \$100,000	\$1,100
\$100,000.01 - \$500,000	\$1,700
\$500,000.01 - \$1,000,000	\$2,250
\$1,000,000.01 - \$5,000,000	\$2,800
\$5,000,000.01 - \$10,000,000	\$3,350
Over \$10,000,000	\$3,750
Non-Monetary/Not Specified	\$1,500

(2) If the claim does not request or specify money damages, the Director may determine that the member surcharge should be more or less than the amount specified in the schedule above, but in any event the amount of the member surcharge may not be less than \$150 or more than \$3,750.

(3) If the claim is filed by the member, the surcharge is due when the claim is filed. If the claim is filed against the member, or against an associated person employed by the member at the time of the events giving rise to the dispute, the surcharge is due when the claim is served in accordance with Rule 12300.

(4) No member shall be assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.

(b) Refund of Member Surcharge

(1) The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the panel:

- Denies all of a customer's claims against the member or associated person; and
- Allocates all fees assessed pursuant to Rule 12902(a) against the customer.

(2) The Director may also refund or waive the member surcharge in extraordinary circumstances.

12902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

(1) Hearing session fees will be charged for each hearing session. The total amount chargeable to the parties for each hearing session is based on the amount in dispute, as specified in the schedule below. In the award, the panel will determine the amount of each hearing session fee that each party must pay.

Hearing Session Fees

Amount of Claim	Hearing Session W/ One Arbitrator	Hearing Session W/ Three Arbitrators
Up to \$2,500	\$ 50	N/A
\$2,500.01 to \$5,000	\$ 125	N/A
\$5,000.01 to \$10,000	\$ 250	N/A
\$10,000.01 to \$25,000	\$ 450	N/A
\$25,000.01 to \$50,000	\$ 450	\$600
\$50,000.01 to \$100,000	\$ 450	\$ 750
\$100,000.01 to \$500,000	\$ 450	\$1,125
Over \$500,000	\$ 450	\$1,200
Unspecified Damages	N/A	\$1,000

(2) If the claim does not request or specify money damages, the Director may determine that the hearing session fee should be more or less than the amount specified in the schedule above, but in any event the hearing session fee shall not be less than \$50 or more than \$1,200 for each hearing session.

(3) If there is more than one claim in a proceeding, the amount of hearing session fees will be based on the largest claim in the proceeding. If any claims are joined or combined under Rules 12312, 12313, or 12314, the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph.

(4) If hearing session fees are allocated against a customer in connection with a claim filed by a member or associated person, the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person. No hearing session fees may be assessed against a customer in connection with a claim filed by a member that is dismissed.

(b) Payment of Hearing Session Fees

(1) The panel may assess the hearing session fees in the award, or may require the parties to pay hearing session fees during the course of the arbitration. The total amount that the panel may require the parties to pay for each hearing session during the course of an arbitration may not exceed the total amount chargeable to the parties for each hearing session under the schedule to paragraph (a) of this rule.

(2) Any interim hearing session fee payments made by a party under this rule will be deducted from the total amount of hearing session fees assessed against that party in the award. If the amount of interim payments is more than the amount assessed against the party in the award, the balance will be refunded to that party.

(c) Assessment of Other Costs and Expenses in Award

In its award, the panel must also determine the amount of any costs and expenses incurred by the parties under the Code or that are within the scope of the agreement of the parties, and which party or parties will pay those costs and expenses.

(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal

If a claim is settled or withdrawn:

- The parties will be subject to an assessment of hearing session fees for hearing sessions already held.
- If NASD receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under Rule 12600 is scheduled to begin, parties that paid a filing fee under Rule 12900 will not be entitled to any refund of the filing fee.
- The parties will also be responsible for any fee or costs incurred under Rules 12502, 12513, 12601, or 12606 in connection with such hearings. If a case is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by Rule 12701(b).

12903. Process Fees Paid by Members

(a) Each member that is a party to an arbitration in which more than \$25,000, exclusive of interest and expenses, is in dispute must pay:

- A non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 12403(b); and
- A non-refundable hearing process fee, due when the parties are notified of the date and location of the hearing on the merits under Rule 12600, as set forth in the schedule below.

Hearing Process Fee Schedule

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Hearing Process Fee</u>
\$1 - \$25,000	\$ 0
\$25,000.01 - \$50,000	\$1,000
\$50,000.01 - \$100,000	\$1,700
\$100,000.01 - \$500,000	\$2,750
\$500,000.01 - \$1,000,000	\$4,000
\$1,000,000.01 - \$5,000,000	\$5,000
More than \$5,000,000	\$5,500
Non-Monetary/Not Specified	\$2,200

(b) If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose will be charged the process fees, even if the member is not a party. No member shall be assessed more than one prehearing and one hearing process fee in any arbitration.

(c) The panel may not reallocate to any other party any prehearing and hearing process fees paid by a member.

12904. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal.

(c) The Director will serve a copy of the award on each party or the representative of the party. The Director will serve the award by using any method available and convenient to the parties and the Director, and that is reasonably expected to cause the award to be delivered to all parties, or their representative, on the same day. Methods the Director may use include, but are not limited to, first class, registered or certified mail, hand delivery, and facsimile or other electronic transmission.

(d) The panel shall endeavor to render an award within 30 business days from the date the record is closed.

(e) The award shall contain the following:

- The names of the parties;
- The name of the parties' representatives, if any;

- An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties;
- A summary of the issues, including the type(s) of any security or product, in controversy;
- The damages and other relief requested;
- The damages and other relief awarded;
- A statement of any other issues resolved;
- The allocation of forum fees and any other fees allocable by the panel;
- The names of the arbitrators;
- The dates the claim was filed and the award rendered;
- The number and dates of hearing sessions;
- The location of the hearings; and
- The signatures of the arbitrators.

(f) The award may contain a rationale underlying the award.

(g) All awards shall be made publicly available.

(h) Fees and assessments imposed by the arbitrators under the Code shall be paid immediately upon the receipt of the award by the parties. Payment of such fees shall not be deemed ratification of the award by the parties.

(i) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award:

- If not paid within 30 days of receipt;
- If the award is the subject of a motion to vacate which is denied; or
- As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

Text of Amended Discovery Guide

Below is the text of NASD's Discovery Guide as amended to reflect changes to the NASD Code of Arbitration Procedure described in SR-NASD-2003-158. Proposed new language is underlined; proposed deletions are in brackets.

* * *

DISCOVERY GUIDE

This Discovery Guide and Document Production Lists supplement the discovery rules contained in NASD Code of Arbitration Procedure for Customer Disputes ("NASD Customer Code." (See Rules 12505-12511.)

[For NASD arbitrations, the Discovery Guide supplements the section in The Securities Industry Conference on Arbitration ("SICA") publication entitled The Arbitrator's Manual, and captioned "Prehearing Conference," found on pages 11 through 16, regarding public customer cases.]

[I. The Need for New Discovery Procedures]

[Discovery disputes have become more numerous and time consuming. The same discovery issues repeatedly arise. To minimize discovery disruptions, the NASD Regulation Office of Dispute Resolution has developed two initiatives to standardize the discovery process: early appointment of arbitrators to conduct an initial prehearing conference and document production lists ("Document Production Lists").]

No requirement under the Discovery Guide supersedes any record retention requirement of any federal or state law or regulation or any rule of a self-regulatory organization.

[The Discovery Guide and Document Production Lists are designed for customer disputes with firms and Associated Person(s).¹ The Discovery Guide also discusses additional discovery requests, information requests, depositions, admissibility of evidence, and sanctions.] The Discovery Guide, including the Document Production Lists[,] serves [will function] as a guide for the parties and the arbitrators; it is not intended to remove flexibility from arbitrators or parties in

a given case. [For instance, a] Arbitrators can order the production of documents not provided for by the Document Production Lists or alter the production schedule described in the Discovery Guide. [Further, n] Nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. [In fact,] NASD [the Office of Dispute Resolution] encourages the parties to agree to the voluntary exchange of documents and information and to stipulate to various matters. The fact that an item appears on a Document Production List does not shift the burden of establishing or defending any aspect of a claim.

[II. Document Production Lists]

[The Office of Dispute Resolution will provide the parties with Document Production Lists (attached to the Discovery Guide) at the time it serves the statement of claim in customer cases.]

The arbitrators and the parties should consider the documents described in Document Production Lists 1 and 2 presumptively discoverable. Absent a written objection, documents on Document Production Lists 1 and 2 shall be exchanged by the parties within the time frames set forth in the NASD Customer Code. [below.] The arbitrators and parties also should consider the additional documents identified in Document Production Lists 3 through 14, respectively, discoverable, as indicated, for cases alleging the following causes of action: churning, failure to supervise, misrepresentation/omission, negligence/breach of fiduciary duty, unauthorized trading, and unsuitability. For the general document production and for each of these causes of action, there are separate Document Production Lists for firms/Associated Person(s) and for customers.

[NASD Rule 10321 provides that the parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration process. As noted, nothing in the Discovery Guide precludes parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.]

¹ NASD Regulation may develop separate Document Production Lists for intra-industry disputes.

[A. Time Frames for Document Production and Objections]

[The parties should produce all required documents listed in the applicable Document Production Lists not later than thirty days² from the date the answer is due or filed, whichever is earlier. If a party redacts any portion of a document prior to production, the redacted pages (or ranges of pages) shall be labeled “redacted.” A party may object to the production of any document, which would include an objection based upon an established privilege such as the attorney-client privilege. If any party objects to the production of any document listed in the relevant Document Production Lists, the party must file written objections with the Office of Dispute Resolution and serve all parties not later than thirty days following the date the answer is due or filed, whichever is earlier. Objections should set forth the reasons the party objects to producing the documents. An objection to the production of a document or a category of documents is not an acceptable reason to delay the production of any document not covered by the objection. A response to an objection should be served on all parties within 10 days from service of the written objections. Objections and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties. The arbitrator(s) shall then determine whether the objecting party has overcome the presumption based upon sufficient reason(s).]

[B.] Confidentiality³]

If a party objects to document production on grounds of privacy or confidentiality, the arbitrator(s) or one of the parties may suggest a stipulation between the parties that the document(s) in question will not be disclosed or used in any manner outside of the arbitration of the particular case, or the arbitrator(s) may issue a confidentiality order. The arbitrator(s) shall not issue an order or use a confidentiality agreement to require parties to produce documents otherwise subject to an established privilege. Objections to the production of documents, based

² All time periods referenced herein are calendar days.

³ Section II. B. is also applicable to additional discovery requests and information requests (see sections IV. and V.).

on an established privilege, should be raised in accordance with the time frame for objections set forth in the NASD Customer Code. [above.]

[C.] Affirmation In The Event That There Are No Responsive Documents or Information

If a party responds that no responsive information or documents exist, the customer or the appropriate person in the brokerage firm who has personal knowledge (i.e., the person who has conducted a physical search), upon the request of the requesting party, must: 1) state in writing that he/she conducted a good faith search for the requested information or documents; 2) describe the extent of the search; and 3) state that, based on the search, no such information or documents exist.

[III. The Initial Prehearing Conference]

[To maximize the efficient administration of a case by the arbitration panel,⁴ the Office of Dispute Resolution staff will schedule an initial prehearing conference in which the arbitrator(s) usually participates.⁵ The initial prehearing conference gives the arbitrator(s) and the parties an opportunity to organize the management of the case, set a discovery cut-off date,⁶ identify dispositive or other potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve any other preliminary issues.⁷ During the initial prehearing conference,

⁴ The panel consists of three arbitrators in most cases. Claims between \$25,000 and \$50,000 may proceed with a single arbitrator. Claims under \$25,000 are decided by a single arbitrator, generally on the pleadings.

⁵ In some instances, the parties may opt out of the initial prehearing conference. To opt out, parties must supply the following information to the Office of Dispute Resolution by the specified deadline:

- 1) a minimum of four sets of mutually agreeable hearing dates;
- 2) a discovery cut-off date;
- 3) a list of all anticipated motions with the motion due dates, opposition due dates, and reply due dates provided;
- 4) a minimum of four dates and times for any proposed prehearing conferences to hear motions; and
- 5) a determination whether briefs will be submitted and, if so, the due date for submission.
- 6)

⁶ The Office of Dispute Resolution recommends that the panel set a cut-off date during the initial prehearing conference for service of discovery requests, giving due consideration to time frames that *permit* timely resolution of objections and disputes prior to the scheduled exchange of hearing exhibits pursuant to the NASD Code of Arbitration Procedure.

⁷ The arbitrators should direct one of the parties to prepare and forward to the Office of Dispute Resolution, within 48 hours, a written order memorializing the results of the prehearing conference,

the arbitrator(s) and the parties should schedule hearing dates for the earliest available time, consistent with the parties' need to prepare adequately for the hearing.]

[Prior to the initial prehearing conference, each arbitrator should become familiar with the claims and defenses asserted in the pleadings filed by the parties. At the initial prehearing conference, the arbitrator(s) should order time limits for discovery that will allow the scheduling of hearing dates within a reasonable time and address all outstanding discovery disputes. If the exchange of properly requested documents has not occurred, the arbitrator(s) should order the production of all required documents, including those outlined in the Document Production Lists (see section II. above), within 30 days following the conference.]

[IV. Additional Discovery Requests]

[The parties may request documents in addition to those identified in the Document Production Lists pursuant to Rule 10321(b). Unless a longer period is allowed by the requesting party, requests should be satisfied or objected to within 30 days from the date of service of the document request. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties.]

[A party may move to compel production of documents when the adverse party (a) refuses to produce such documents or (b) offers only to produce alternative documents that are unacceptable to the requesting party. The Office of Dispute Resolution will provide the chairperson of the panel with the motion, opposition, and reply, along with the underlying discovery documents the parties have attached to their pleadings. The chairperson should determine whether to decide the matter on the papers or to convene a prehearing conference (usually via telephone). In considering motions to compel, particularly where non-production is based upon an argument asserting an established privilege, such as the attorney-client privilege, the arbitrator(s) should always give consideration to the arguments set forth by both

approved as to form and content by the other parties. When motions are heard at the initial prehearing conference, the panel may order the parties to submit the order with a stipulation as to form and content from all parties.

sides, particularly as to the relevancy of the documents or information. The arbitrator(s) should carefully consider such motions, regardless of whether the item requested is on any of the Document Production Lists. If in doubt, the arbitrator(s) should ask the requesting party what specific documents it is trying to obtain and what it seeks to prove with the documents.]

[V.] Information Requests

Like requests for documents, parties may serve requests for information pursuant to Rule [10321(b)] 12507. Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require exhaustive answers or fact finding. Standard interrogatories, as utilized in state and federal courts, are generally not permitted in arbitration.

[Unless a longer period is allowed by the requesting party, information requests should be satisfied or objected to within 30 days from the date of service of the requests. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties.]

[A party may move to compel responses to requests for information that the adverse party refuses to provide. The Office of Dispute Resolution will provide the chairperson of the panel with the motion, opposition, and reply, along with the underlying discovery documents the parties have attached to their pleadings. The chairperson should determine whether to decide the matter on the papers or to convene a prehearing conference (usually via telephone).]

[VI. Depositions]

[Depositions are strongly discouraged in arbitration. Upon request of a party, the arbitrator(s) may permit depositions, but only under very limited circumstances, such as: 1) to preserve the testimony of ill or dying witnesses; 2) to accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing; 3) to expedite large or complex cases; and 4) to address unusual

situations where the arbitrator(s) determines that circumstances warrant departure from the general rule. Balanced against the authority of the arbitrator(s) to permit depositions, however, is the traditional reservation about the overuse of depositions in arbitration.]

[VII.] Admissibility

Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

[VIII. Sanctions]

[The arbitration panel should issue sanctions if any party fails to produce documents or information required by a written order, unless the panel⁸ finds that there is "substantial justification" for the failure to produce the documents or information. The panel has wide discretion to address noncompliance with discovery orders. For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys' fees caused by noncompliance. In extraordinary cases, the panel may initiate a disciplinary referral against a registered entity or person who is a party or witness in the proceeding or may, pursuant to Rule 10305(b), dismiss a claim, defense, or proceeding with prejudice as a sanction for intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.]

* * *

DOCUMENT PRODUCTION LISTS

* * *

LIST 1

DOCUMENTS TO BE PRODUCED IN ALL CUSTOMER CASES⁹

⁸ As with other rulings, an arbitration panel's ruling need only be by majority vote; it need not be unanimous.

⁹ Only named parties must produce documents pursuant to the guidelines set forth herein. However, non-parties may be required to produce documents pursuant to a subpoena or an arbitration panel order to direct the production of documents (see Rule [10322] 12513). In addition, the arbitration

FIRM/ASSOCIATED PERSON(S):

- 1) All agreements with the customer, including, but not limited to, account opening documents, cash, margin, and option agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and new account forms.
- 2) All account statements for the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 3) All confirmations for the customer's transaction(s) at issue. As an alternative, the firm/Associated Person(s) should ascertain from the claimant and produce those confirmations that are at issue and are not within claimant's possession, custody, or control.
- 4) All "holding (posting) pages" for the customer's account(s) at issue or, if not available, any electronic equivalent.
- 5) All correspondence between the customer and the firm/Associated Person(s) relating to the transaction(s) at issue.
- 6) All notes by the firm/Associated Person(s) or on his/her behalf, including entries in any diary or calendar, relating to the customer's account(s) at issue.
- 7) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer), and/or between the firm and the Associated Person(s).
- 8) All Forms RE-3, U-4, and U-5, including all amendments, all customer complaints identified in such forms, and all customer complaints of a similar nature against the Associated Person(s) handling the account(s) at issue.
- 9) All sections of the firm's Compliance Manual(s) related to the claims alleged in the statement of claim, including any separate or supplemental manuals governing the duties and responsibilities of the Associated Person(s) and supervisors, any bulletins (or similar notices) issued by the compliance department, and the entire table of contents and index to each such Manual.
- 10) All analyses and reconciliations of the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 11) All records of the firm/Associated Person(s) relating to the customer's account(s) at issue, such as, but not limited to, internal reviews and exception and activity reports which reference the customer's account(s) at issue.
- 12) Records of disciplinary action taken against the Associated Person(s) by any regulator or employer for all sales practices or conduct similar to the conduct alleged to be at issue.

* * *

chairperson may use the Document Production Lists as guidance for discovery issues involving non-parties.

LIST 2

DOCUMENTS TO BE PRODUCED IN ALL CUSTOMER CASES

CUSTOMER:

- 1) All customer and customer-owned business (including partnership or corporate) federal income tax returns, limited to pages 1 and 2 of Form 1040, Schedules B, D, and E, or the equivalent for any other type of return, for the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 2) Financial statements or similar statements of the customer's assets, liabilities and/or net worth for the period(s) covering the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 3) Copies of all documents the customer received from the firm/Associated Person(s) and from any entities in which the customer invested through the firm/Associated Person(s), including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence.
- 4) Account statements and confirmations for accounts maintained at securities firms other than the respondent firm for the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 5) All agreements, forms, information, or documents relating to the account(s) at issue signed by or provided by the customer to the firm/Associated Person(s).
- 6) All account analyses and reconciliations prepared by or for the customer relating to the account(s) at issue.
- 7) All notes, including entries in diaries or calendars, relating to the account(s) at issue.
- 8) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer).
- 9) All correspondence between the customer (and any person acting on behalf of the customer) and the firm/Associated Person(s) relating to the account(s) at issue.
- 10) Previously prepared written statements by persons with knowledge of the facts and circumstances related to the account(s) at issue, including those by accountants, tax advisors, financial planners, other Associated Person(s), and any other third party.
- 11) All prior complaints by or on behalf of the customer involving securities matters and the firm's/Associated Person(s)' response(s).
- 12) Complaints/Statements of Claim and Answers filed in all civil actions involving securities matters and securities arbitration proceedings in which the customer has been a party, and all final decisions and awards entered in these matters.
- 13) All documents showing action taken by the customer to limit losses in the transaction(s) at issue.

* * *

LIST 3

CHURNING

FIRM/ASSOCIATED PERSON(S)

- 1) All commission runs relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.
- 2) All documents reflecting compensation of any kind, including commissions, from all sources generated by the Associated Person(s) assigned to the customer's account(s) for the two months preceding through the two months following the transaction(s) at issue, or up to 12 months, whichever is longer. The firm may redact all information identifying customers who are not parties to the action, except that the firm/Associated Person(s) shall provide at least the last four digits of the non-party customer account number for each transaction.
- 3) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated during the years in which the transaction(s) or occurrence(s) in question occurred, including: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

* * *

LIST 4

CHURNING

CUSTOMER

No additional documents identified.

* * *

LIST 5

FAILURE TO SUPERVISE

FIRM/ASSOCIATED PERSON(S):

- 1) All commission runs and other reports showing compensation of any kind relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.
- 2) All exception reports and supervisory activity reviews relating to the Associated Person(s) and/or the customer's account(s) that were generated not earlier than one year before or not later than one year after the transaction(s) at issue, and all other documents reflecting supervision of the Associated Person(s) and the customer's account(s) at issue.
- 3) Those portions of internal audit reports at the branch in which the customer maintained his/her account(s) that: (a) focused on the Associated Person(s) or the

transaction(s) at issue; and (b) were generated not earlier than one year before or not later than one year after the transaction(s) at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

4) Those portions of examination reports or similar reports following an examination or an inspection conducted by a state or federal agency or a self-regulatory organization that focused on the Associated Person(s) or the transaction(s) at issue or that discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

* * *

LIST 6

FAILURE TO SUPERVISE

CUSTOMER

No additional documents identified.

* * *

LIST 7

MISREPRESENTATION/OMISSIONS

FIRM/ASSOCIATED PERSON(S)

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

* * *

LIST 8

MISREPRESENTATION/OMISSIONS

CUSTOMER

1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.

2) Copy of the customer's resume.

3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

* * *

LIST 9

NEGLIGENCE/BREACH OF FIDUCIARY DUTY

FIRM/ASSOCIATED PERSON(S)

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

LIST 10

NEGLIGENCE/BREACH OF FIDUCIARY DUTY

CUSTOMER

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Copy of the customer's resume.
- 3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

* * *

LIST 11

UNAUTHORIZED TRADING

FIRM/ASSOCIATED PERSON(S)

- 1) Order tickets for the customer's transaction(s) at issue.
- 2) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
- 3) All documents relied upon by the firm/Associated Person(s) to establish that the customer authorized the transaction(s) at issue.

LIST 12

UNAUTHORIZED TRADING

CUSTOMER

1. Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
2. All documents relied upon by the customer to show that the transaction(s) at issue was made without his/her knowledge or consent.

* * *

LIST 13

UNSUITABILITY

FIRM/ASSOCIATED PERSON(S)

- 1) Copies of all materials prepared, used, or reviewed by the firm/Associated Person(s) related to the transactions or products at issue, including but not limited to research reports, prospectuses, other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.
- 2) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated in any manner during the years in which the transaction(s) or occurrence(s) in question occurred, including, but not limited to: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

LIST 14

UNSUITABILITY

CUSTOMER

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Written documents relied upon by the customer in making the investment decision(s) at issue.
- 3) Copy of the customer's resume.
- 4) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 3.

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
PART I <u>INTERPRETIVE</u> <u>MATERIAL,</u> DEFINITIONS, ORGANIZATION AND AUTHORITY			The current Code does not contain a separate definitions section, although some rules, such as Rule 10308, include definitions applicable only to the specific rule. Frequent users of the forum have advised that it would be helpful to include a comprehensive definitions section that applies to the entire Code. Some of the definitions are based on the definitions already contained in specific rules, some are based on definitions contained in other NASD rules or By-laws, and some are based on current practice. All references to “rule” in the comments section of this chart refer to proposed rules.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	<u>IM 12000. Failure to Act Under Provisions of Code of Arbitration Procedure</u> It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to: (a) fail to submit a dispute for arbitration under the NASD Code of Arbitration Procedure ("Code") as required by the Code; (b) fail to comply with any injunctive order issued pursuant to the Code; (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code; (d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock		<u>Interpretive Material (IM) 10100 has been re-numbered as IM 12000, and moved to Part I of the Code.</u>

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; (e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD; (f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are: (1) customers with a claim		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	against a member or an associated person; (2) associated persons with a claim against a member or an associated person; (3) members with a claim against another member; or (4) members with a claim against an associated person that relates exclusively to a promissory note. Written waiver by such parties shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This paragraph applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons. All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award. It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure.		
Definitions	12100. Definitions <u>Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.</u> (a) Associated Person The term “associated person” or “associated person of a member” means a person associated with a member, as that term is defined in		In the interest of Plain English, the revised Code uses the term “associated person” to mean “person associated with a member” or “associated person of a member” as defined in NASD By-Laws.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	paragraph (m).		
	(b) Board The term “Board” means the Board of Governors of NASD		
	(c) Claim The term “claim” means an allegation or request for relief.		In paragraph (h), the term “dispute” is defined to mean “a dispute, claim or controversy.” A dispute may consist of one or more claims. Throughout the Code, the term “claim” is used to refer to a specific allegation or request for relief, while the term “dispute” refers to the entire matter submitted to arbitration.
	(d) Claimant The term “claimant” means a party that files the statement of claim that initiates an arbitration under Rule 12302.		
	(e) Code		NASD will maintain separate Customer,

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	The term "Code" means the Code of Arbitration Procedure for Customer Disputes. For disputes involving only industry parties, see the NASD Code of Arbitration Procedure for Industry Disputes.		Industry and Mediation Codes.
	(f) Counterclaim The term "counterclaim" means a claim asserted against a claimant by a respondent		
	(g) Cross Claim The term "cross claim" means a claim asserted by a respondent against another already-named respondent.		
	(h) Day Except as otherwise provided, the term "day" means calendar days. If a deadline specified in the Code falls on a Saturday, Sunday or any NASD holiday, the deadline is extended until the next business day.	10308(a)(1) "day" For purposes of this Rule, the term "day" means calendar day.	
	(i) Director		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	The term “Director” means the Director of NASD Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes NASD staff to whom the Director has delegated authority.		
	(j) Dispute The term “dispute” means a dispute, claim or controversy. A dispute may consist of one or more claims.		Throughout the Code, the term “claim” is used to refer to a specific allegation or request for relief, while the term “dispute” refers to the entire matter submitted to arbitration.
	(k) Hearing The term “hearing” means the hearing on the merits of an arbitration under Rule 12600.		
	(l) Hearing Session The term “hearing session” means any meeting between the parties and arbitrator(s) of 4 hours or less, including a hearing or a prehearing conference.		
	(m) Member		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	For purposes of this Code, the term "member" means any broker or dealer admitted to membership in NASD, whether or not the membership has been terminated or cancelled.		
	(n) Non-Public Arbitrator The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and: (1) Is or, within the past five years, was: (A) Associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer); (B) Registered under the Commodity Exchange Act; (C) A member of a commodities exchange or a registered futures association; or (D) Associated with a person or firm registered under the Commodity Exchange Act; (2) Is retired from, or spent a	Rule 10308 (a)(4)"non-public arbitrator" The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and: (A) is, or within the past 5 years, was: (i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer); (ii) registered under the Commodity Exchange Act; (iii) a member of a commodities exchange or a registered futures association; or (iv) associated with a person or firm registered under the	The definition of "professional work" has been added to reflect approval of a proposed rule change by the SEC addressing this issue after the Code had been filed.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	substantial part of a career engaging in, any of the business activities listed in paragraph (n)(1); (3) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (n)(1); or (4) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities. <u>For purposes of this rule, the term “professional work” shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.</u>	Commodity Exchange Act; (B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A); (C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or (D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities. * * * * <u>IM-10308. Arbitrators Who Also Serve as Mediators</u>	

**COMPARISON CHART OF
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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		<u>Mediation services performed by mediators who are also arbitrators shall not be included in the definition of “professional work” for purposes of Rule 0308(a)(4)(C), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.</u> *****	
	(o) Panel The term “panel” means the arbitration panel, whether it consists of one or more arbitrators.		A panel normally consists of one or three arbitrators, depending on the amount in dispute. However, a panel could consist of two arbitrators if an arbitrator is removed from a three-arbitrator panel, and the parties agree to proceed with only the remaining arbitrators. See Rule 12411(a).
	(p) Person Associated with a Member The term “person associated with a member” means:		This is based on Article I, Section dd, of NASD’s By-Laws.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	(1) A natural person registered under the Rules of NASD; or (2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with NASD under the By-Laws or the Rules of NASD. For purposes of the Code, a person formerly associated with a member is a person associated with a member.		
	(q) Prehearing Conference The term “prehearing conference” means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins.		
	(r) Public Arbitrator	10308(a)(5) “public arbitrator”	<u>The definition “revenue” of</u>

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and: (1) Is not engaged in the conduct or activities described in paragraphs (n)(1)-(4); (2) Was not engaged in the conduct or activities described in paragraphs (n)(1)-(4) for a total of 20 years or more; (3) Is not an investment adviser; (4) Is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (n)(1)-(4); and (5) is not the spouse or a family member of a person who is engaged in the conduct or activities described in paragraphs (n)(1)-(4). For the purpose of this Rule, the term " family member" means: (A) The parent, stepparent, child or stepchild of any person engaged in	(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and: (i) is not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); (ii) was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more; (iii) is not an investment adviser; (iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); and (v) is not the spouse or an immediate family member of a person who is engaged in the	<u>has been added to reflect approval of a proposed rule change by the SEC addressing this issue after the Code had been filed.</u>

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	the conduct or activities described in paragraphs (n)(1)-(4); (B) A member of the household of a person engaged in the conduct or activities described in paragraphs (n)(1)-(4); (C) A person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (n)(1)-(4); or (D) A person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (n)(1)-(4). <u>For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.</u>	conduct or activities described in paragraphs (a)(4)(A) through (D). (B) For the purpose of this Rule, the term "immediate family member" means: (i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); (ii) a member of the household of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); (iii) a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or (iv) a person who is claimed as a dependent for federal income tax purposes by a person	

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D). * * * * <u>IM-10308. Arbitrators Who Also Serve as Mediators</u> ***** <u>Mediation fees received by mediators who are also arbitrators shall not be included in the definition of “revenue” for purposes of Rule 10308(a)(5)(A)(iv), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.</u> *****	
	(s) Respondent The term “respondent” means a party against whom a statement of claim or third party claim has been filed. A claimant against whom a counterclaim has been filed is not a respondent for purposes of the Code.		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	(t) Statement of Claim The term “statement of claim” means the initial or amended claim filed by the party or parties initiating the arbitration.		
	(u) Third Party Claim The term “third party claim” means a claim asserted against a party not already named in the statement of claim or any other previous pleading.		
	(v) Uniform Submission Agreement The term “Uniform Submission Agreement” means the NASD Uniform Submission Agreement. The NASD Uniform Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.		
Applicability of Code and Incorporation by Reference	12101. Applicability of Code and Incorporation by Reference (a) Applicability of Code	10204. Applicability of Uniform Code Except as otherwise provided in the Rule 10200 Series, the	This rule has been amended to reflect the new organization of the Code, including the creation of separate

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	The Code applies to any dispute between a customer and a member or associated person of a member that is submitted to arbitration under Rule 12200 or 12201. (b) Incorporation by Reference When a dispute is submitted to arbitration under the Code pursuant to an arbitration agreement, the Code is incorporated by reference into the agreement.	Rules and procedures applicable to arbitrations concerning industry and clearing controversies shall be those set forth hereinafter under the Rule 10300 Series. 10331. Incorporation By Reference This Code shall be deemed a part of and incorporated by reference in every agreement to arbitrate under the Rules of the Association including a duly executed Submission Agreement.	Industry and Customer Codes.
National Arbitration and Mediation Committee	12102. National Arbitration and Mediation Committee (a) Pursuant to Part V(C)(1)(b) of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan"), 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	10102. National Arbitration and Mediation Committee (a) The NASD Dispute Resolution Board of Directors, following the annual election of its members by the NASD Board of Governors, shall appoint a National Arbitration and Mediation Committee of such size and composition, including representation from the public at large, as it shall	The rule is substantially similar to the current rule, but has been updated based on the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	NAMC shall be Non-Industry members. (2) The Chairperson of the Board shall name the chairperson of the NAMC. (b) Pursuant to the Delegation Plan, 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] <u>quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.</u> The NAMC has such other power and authority as is necessary to carry out the purposes of	deem appropriate and in the public interest. The Chairman of the Committee shall be named by the Chairman of the NASD Dispute Resolution Board. The said Committee shall establish and maintain rosters of neutrals composed of persons from within and without the securities industry. (b) The Committee shall have the authority to recommend to the NASD Dispute Resolution Board appropriate Rules, regulations, and procedures to govern the conduct of all arbitration, mediation, and other dispute resolution matters before the Association. All Rules, regulations, and procedures and amendments thereto presented by the Committee must be by a majority vote of all the members of the said Committee. It also shall have such other power and authority as is necessary to effectuate the purposes of this Code. (c) The Committee shall meet	

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	this Code. (c) The NAMC may meet as frequently as necessary, but must meet at least once a year.	at least once each year and at such other times as are deemed necessary by the Committee.	
Director of Dispute Resolution	12103. Director of Dispute Resolution (a) The Board shall appoint a Director of Dispute Resolution. The Director shall perform all the administrative duties relating to arbitrations submitted under the Code. The Director may delegate his or her duties when it is appropriate, unless the Code provides otherwise. (b) The Director shall consult with the NAMC at the NAMC's request. (c) The President of NASD Dispute Resolution may perform the Director's duties. If the Director is unable to perform his or her duties, the President of NASD Dispute Resolution may appoint an interim Director.	10103. Director of Arbitration The Board of Governors of the Association shall appoint a Director of Arbitration (Director) who shall be charged with the performance of all administrative duties and functions in connection with matters submitted for arbitration pursuant to this Code. The Director shall be directly responsible to the National Arbitration and Mediation Committee and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so. The duties and functions of the Director may be delegated by the Director, as appropriate. In the event of the incapacitation, resignation, removal, or other	To reflect current corporate structure, the rule provides that the President of NASD Dispute Resolution is authorized to perform the Director's duties, and that only the President of NASD Dispute Resolution may appoint an interim director if necessary. (Under the current rule, the President of NASD Dispute Resolution or an Executive Vice President of NASD may appoint an interim Director.) The language in Rule 12103(b) has been changed to reflect current practice. The Director meets with the NAMC, usually every quarter, and updates the Committee on

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		permanent or indefinite inability of the Director to perform the duties and responsibilities of the Director, the President or an Executive Vice President of the Association may appoint an interim Director.	the state of the arbitration forum. At this time, the Director receives feedback and suggestions on arbitration rules and procedures.
Effect of Arbitration on NASD Regulatory Activities	12104. Effect of Arbitration on NASD Regulatory Activities (a) Submitting a dispute to arbitration under this Code does not limit or preclude any right, action or determination by NASD that it would otherwise be authorized to adopt, administer or enforce. (b) Only at the conclusion of an arbitration, any arbitrator may refer to NASD for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD's rules, the federal securities laws, or other applicable rules or laws.	10105. Non-Waiver of Association Objects and Purposes The submission of any matter to arbitration under this Code shall in no way limit or preclude any right, action or determination by the Association which it would otherwise be authorized to adopt, administer or enforce. If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the	No substantive change.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		Association's Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to Rule 10330 of the Code	
Agreement of Parties	12105. Agreement of the Parties (a) Except as provided in paragraph (b), if the Code provides that the parties may agree to modify a provision of the Code, or a decision of the Director or the panel, the written agreement of all named parties is required. (b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written		The new rule will allow active parties in arbitration to exercise control over the arbitration.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	agreement of that party is not required while the party is inactive or not responsive.		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
PART II GENERAL ARBITRATION RULES			
Arbitration Under an Arbitration Agreement or the Rules of NASD	12200. Arbitration Under an Arbitration Agreement or the Rules of NASD Parties must arbitrate a dispute under the Code if: - Arbitration under the Code is either: (1) Required by a written agreement; or (2) Requested by the customer. - The dispute is between a customer and a member or associated person of a member; and - The dispute arises in connection with the business activities of the member or the associated person, except the insurance business activities of a member that is also	10301. Required Submission (a) Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer	No substantive change. In the interest of having shorter, more readable rules, the substance of current Rule 10301 has been broken into several rules. The remainder of current Rule 10301(a) is now in Rule 12202. For other parts of current Rule 10301, see Rules 12203 and 12204.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	an insurance company.		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
Elective Arbitration	12201. Elective Arbitration Parties may arbitrate a dispute under the Code if: • The parties agree in writing to submit the dispute to arbitration under the Code after the dispute arises; and • The dispute is between a customer and a member, associated person of a member, or other related party; and • The dispute arises in connection with the business activities of a member or an associated person, except disputes involving the insurance business activities of a member that is also an insurance company.	10101. Matters Eligible for Submission This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(iv) of the By-Laws of the Association for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company: (a) between or among members; (b) between or among members and associated persons; (c) between or among members or associated persons and public customers, or others; and	No substantive change.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		(d) between or among members, registered clearing agencies with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures, and participants, pledgees, or other persons using the facilities of a registered clearing agency, as these terms are defined under the rules of such a registered clearing agency	
Claims Against Inactive Members	12202. Claims Against Inactive Members A claim by or against a member in one of the following categories is ineligible for arbitration under the Code unless the customer agrees in writing to arbitrate after the claim arises: • A member whose membership is terminated, suspended, cancelled or revoked; • A member that has been expelled from NASD; or	10301. Required Submission (a) . . . A claim involving a member in the following categories shall be ineligible for submission to arbitration under the Code unless the customer agrees in writing to arbitrate the claim after it has arisen: (1) A member whose membership is terminated, suspended, canceled, or revoked; (2) A member that has been	The phrase “ a claim “involving a member” has been changed to “a claim by or against a member” to clarify that the rule does not apply to claims that may tangentially involve a member firm that falls into one of the enumerated categories, but that are not by or against such a member firm.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	A member that is otherwise defunct.	expelled from the NASD; or (3) A member that is otherwise defunct.	
Denial of NASD Forum	12203. Denial of NASD Forum and Referral to Other Forums (a) The Director may decline to permit the use of the NASD arbitration forum if the Director determines that, given the purposes of NASD and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health and safety of arbitrators, staff, or parties or their representatives. Only the Director or the President of NASD Dispute Resolution may exercise the Director's authority under this Rule. (b) Disputes that arise out of transactions in a readily identifiable market may be referred to the arbitration forum for that market, if the claimant agrees.	10301. Required Submission (b) Under this Code, the Director of Arbitration, upon approval of the Executive Committee of the National Arbitration and Mediation Committee, or the National Arbitration and Mediation Committee, shall have the right to decline the use of its arbitration facilities in any dispute, claim, or controversy, where, having due regard for the purposes of the Association and the intent of this Code, such dispute, claim, or controversy is not a proper subject matter for arbitration. (c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by the Association.	To give the Director more flexibility in addressing security concerns and other unusual but serious situations that may require immediate resolution, the rule also expands the grounds upon which the Director may deny access to the forum. The requirement that the NAMC or its Executive Committee must approve decisions by the Director to deny the forum has been deleted. However, the rule provides that the Director's authority under this rule may not <u>be</u> delegated or exercised by anyone other than the Director or the President of NASD Dispute Resolution.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
Class Action Claims	12204. Class Action Claims (a) Class action claims may not be arbitrated under the Code. (b) No claim that is included in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, will be arbitrated under the Code, unless the party bringing the claim shows that it is not participating in the class action, or has withdrawn from the class according to conditions set by the court, if any. (c) The Director will refer to a panel any dispute as to whether a claim is part of a class action, unless a party asks the court hearing the class action to resolve the dispute within 10 days of receiving notice that the Director has decided to refer the dispute to a panel. (d) A member or associated person may not enforce any arbitration agreement against a member of a	10301. Required Submission (d) Class Action Claims (1) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Association. (2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Association if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self-regulatory organization for classwide arbitration. However, such claims shall be eligible for arbitration in accordance with paragraph (a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class	No substantive change.

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	certified or putative class action with respect to any claim that is the subject of the certified or putative class action until: • The class certification is denied; • The class is decertified; • The member of the certified or putative class is excluded from the class by the court; or • The member of the certified or putative class elects not to participate in the class or withdraws from the class according to conditions set by the court, if any. This paragraph does not otherwise affect the enforceability of any rights under the Code or any other agreement.	prescribed by the court. Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrators in accordance with Rule 10302 or Rule 10308, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrators. (3) No member or associated person shall seek to enforce any agreement to arbitrate against a customer, other member or person associated with a member who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims	

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		encompassed by the class action unless and until: (A) the class certification is denied; (B) the class is decertified; (C) the customer, other member or person associated with a member is excluded from the class by the court; or (D) the customer, other member or person associated with a member elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court. (4) No member or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.	

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
Shareholder Derivative Actions	12205. Shareholder Derivative Actions Shareholder derivative actions may not be arbitrated under the Code.		New rule. Similar to NYSE Rule 600(e).
Time Limits	12206. Time Limits (a) Time Limitation on Submission of Claims No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule. (b) Dismissal under Rule Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.	Rule 10304. Time Limitation Upon Submission (a) No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. The panel will resolve any questions regarding the eligibility of a claim under this Rule. (b) Dismissal of a claim under this Rule does not prohibit a party from pursuing the claim in court. By requesting dismissal of a claim under this Rule, the requesting party agrees that if the panel dismisses a claim under the Rule, the party that filed the dismissed claim may withdraw	No substantive change.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	(c) Effect of Rule on Time Limits for Filing Claim in Court The rule does not extend applicable statutes of limitations. However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while NASD retains jurisdiction of the claim. (d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration If a party submits a claim to a court of competent jurisdiction, the six-year time limitation will not run while the court retains jurisdiction of the claim matter.	any remaining related claims without prejudice and may pursue all of the claims in court. * * * 10307. Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration (a) Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Association shall retain jurisdiction upon the matter submitted. (b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the	

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.	
Extension of Deadlines	12207. Extension of Deadlines (a) The parties may agree in writing to extend or modify any deadline for: • Serving an answer; • Returning arbitrator or chairperson lists; • Responding to motions; or • Exchanging documents or witness lists. If the parties agree to extend or modify a deadline under this rule, they must notify the Director of the new deadline in writing. (b) The panel may extend or modify any deadline listed in paragraph (a),	10314. Initiation of Proceedings (a) (5) The time period to file any pleading, whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party Pleading, may be extended for such further period as may be granted by the Director of Arbitration or with the consent of the initial claimant. Extensions of the time period to file an Answer are disfavored and will not be granted by the Director except in extraordinary circumstances.	The rule is intended to provide more guidance to parties and arbitrators regarding when and under what circumstances deadlines established by the panel and the Code may be modified or extended. It is designed to give parties maximum control over extensions of deadlines set by the Code, but to ensure that the panel retains control over deadlines established by the panel. It also gives the Director limited authority to extend or modify deadlines for good cause. Although good cause is a lower standard than extraordinary

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	or any other deadline set by the panel, either on its own initiative or upon motion of a party. (c) The Director may extend or modify any deadline or time period set by the Code for good cause. The Director may also extend or modify any deadline or time period set by the panel in extraordinary circumstances.		circumstances, which refers to unexpected and uncontrollable events such as a weather-related or security emergency, good cause is not a negligible standard. In the context of the proposed rule, the good cause requirement means that extensions of Code deadlines by the Director are generally disfavored, and that the Director must take into account the effect of the extension on all parties before granting such a request.
Representation of Parties	12208. Representation of Parties All parties have the right to be represented by counsel during any stage of an arbitration.	10316. Representation by Counsel All parties shall have the right to representation by counsel at any stage of the proceedings	No substantive change.
Legal Proceedings	12209. Legal Proceedings During an arbitration, no party may bring any suit, legal action, or proceeding against any other party that concerns or that would resolve	10106. Legal Proceedings No party shall, during the arbitration of any matter, prosecute or commence any suit, action, or proceeding	No substantive change.

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	any of the matters raised in the arbitration[, except as otherwise provided by the Code or by applicable law].	against any other party touching upon any of the matters referred to arbitration pursuant to this Code.	
Ex Parte Communications	12210. Ex Parte Communications (a) Except as provided in Rule 12211, no party, or anyone acting on behalf of a party, may communicate with any arbitrator outside of a scheduled hearing or conference regarding an arbitration, unless all parties or their representatives are present. (b) No party, or anyone acting on behalf of a party, may send or give any written motion, request, submission or other materials directly to any arbitrator, unless the arbitrators and the parties agree, or the Code provides otherwise.		New rule. The rule is based on general ex parte rules applicable in court proceedings, and reflects current NASD practice. The NASD Arbitrators' Manual and NASD arbitrator training materials currently direct arbitrators to avoid ex parte communications with parties, and arbitrators receive training on how and why to do so.
Direct Communication Between Parties and Arbitrators	12211. Direct Communication Between Parties and Arbitrators (a) This rule provides procedures under which parties and arbitrators may communicate directly. (b) Only parties that are represented	<u>10334. Direct Communication Between Parties and Arbitrators</u> <u>(a) This rule provides procedures under which parties and arbitrators may communicate directly.</u>	The SEC approved the rule after the Code had been filed.

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	by counsel may use direct communication under this [R]rule. If, during the proceeding, a party chooses to appear <i>pro se</i> (without counsel), this [R]rule shall no longer apply. (c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used. (d) Parties may send the arbitrators only items that are listed in an order. (e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used. (f) Copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.	<u>(b) Only parties that are represented by counsel may use direct communication under this Rule. If, during the proceeding, a party chooses to appear pro se (without counsel), this Rule shall no longer apply.</u> <u>(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.</u> <u>(d) Parties may send the arbitrators only items that are listed in an order.</u> <u>(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.</u> <u>(f) Copies of all materials sent to arbitrators must also be sent</u>	

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	(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators. (h) Parties may not communicate orally with any of the arbitrators outside the presence of all parties. (i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.	<u>at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.</u> <u>(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.</u> <u>(h) Parties may not communicate orally with the arbitrators outside the presence of all parties.</u> <u>(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.</u>	
Sanctions	12212. Sanctions (a) The panel may sanction a party for failure to comply with any provision in	10305. Dismissal of Proceedings (b) The arbitrators may dismiss a claim, defense, or proceeding	The rule incorporates and codifies the sanctions provisions in the NASD Discovery Guide. The rule

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	the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel. Unless prohibited by applicable law, sanctions may include, but are not limited to: • Assessing monetary penalties payable to one or more parties; • Precluding a party from presenting evidence; • Making an adverse inference against a party; • Assessing postponement and/or forum fees; and • Assessing attorneys' fees, costs and expenses. (b) The panel may initiate a disciplinary referral at the conclusion of an arbitration. (c) The panel may dismiss a claim, defense or arbitration with prejudice as a sanction for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective.	with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.	is intended to provide more guidance to parties and arbitrators regarding the scope of arbitrator authority to address noncompliance with the Code or orders of the panel. The rule also provides that the panel may sanction a party or a party's representative in egregious situations.

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Hearing Locations	12213. Hearing Locations (a) <u>U.S. Hearing Location</u> (i) The Director will decide which of NASD's hearing locations will be the hearing location for the arbitration. Generally, the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. (ii) [(b)] Before arbitrator lists are sent to the parties under Rule 12403, the parties may agree in writing to a hearing location other than the one selected by the Director. (iii) [(c)] The Director may change the hearing location upon motion of a party, as set forth in Rule 12503. <u>(b) Foreign Hearing Location</u> (i) <u>If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign</u>		New rule. This rule codifies current practice <u>in paragraph (a)</u> and provides guidance to parties regarding the selection of hearing locations. <u>The rule language on foreign hearing locations has been added to reflect approval of a proposed rule change by the SEC addressing this issue after the Code had been filed.</u>

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	<u>arbitrators, provided that the foreign arbitrators have:</u> <u>(A) met NASD background qualifications for arbitrators;</u> <u>(B) received training on NASD arbitration rules and procedures; and</u> <u>(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.</u> <u>(ii) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rule 12900(d).</u>		

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Payment of Arbitrators	12214. Payment of Arbitrators <u>(a) Except as provided in paragraph (b) and Rule 12800, NASD will pay the panel an honorarium, as follows:</u> \$200 to each arbitrator for each hearing session in which he or she participates; and - An additional \$75 per day to the chairperson for each hearing on the merits. <u>(b) The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.</u>	IM-10104. Arbitrators' Honorarium All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate. The honorarium shall be \$200 for each hearing session[, \$50 for travel to a canceled hearing,] and \$75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be \$125. <u>The honorarium for travel to a canceled hearing session shall be \$50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of \$100.</u> <u>The Director may authorize a</u>	The amount of the honorarium in Simplified Arbitrations is in the Simplified Arbitration Rule, 12800. The reference to expenses for travel to a cancelled hearing has been removed from this rule. NASD has a comprehensive policy regarding arbitrator travel expenses. NASD believes that the partial and incomplete reference to travel expenses in the Code may be confusing to parties and arbitrators. NASD's policy for reimbursement of travel expenses is available at www.nasd.com. <u>Paragraph (b) has been added to reflect approval of a proposed rule change by the SEC addressing this issue after the Code had been filed.</u>

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		<u>higher or additional honorarium for the use of a foreign hearing location.</u>	

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PART III			
INITIATING AND RESPONDING TO CLAIMS			
Methods of Filing and Serving Documents	12300. Methods of Filing and Serving Documents (a) Initial statements of claim must be filed with the Director, with enough copies for each other party and each arbitrator. The number of arbitrators is determined in accordance with Rule 12401. The Director will serve the statement of claim on the other parties, and send copies of the statement of claim to each arbitrator. (b) The parties must serve all other pleadings and other documents directly on each other party. Parties must serve all pleadings on all parties at the same time and in the same manner, unless the parties agree otherwise. (c) Unless the Code provides otherwise, parties must also file all pleadings and other documents with	Rule 10314. Initiation of Proceedings (c) Service and Filing with the Director of Arbitration (1) Service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service on a party	To make rules shorter and easier to read, the substance of current Rule 10314 has been broken into several rules. Please see Rules 12300-12306; Rule 12308; and Rules 12312-12314. This rule is intended to provide general information about when and how pleadings must be filed and served. Paragraph (f) imposes a new requirement on parties to notify the Director of any changes in address during an arbitration. This provision is intended to streamline the administration of arbitrations and save NASD staff and parties'

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	the Director, with additional copies for each arbitrator. Pleadings and other documents must be filed with the Director at the same time and in the same manner in which they are served on the other parties. Parties filing pleadings and other documents with the Director must include a certificate of service stating the names of the parties served, the date and method of service, and the address(es) to which service was made. (d) Pleadings and other documents may be filed and served by: first class mail; overnight mail or delivery service; hand delivery; facsimile; or any other method, including electronic mail, that is approved or required by the panel. (e) Filing and service are accomplished on the date of mailing either by first-class postage prepaid mail or overnight mail service, or, in the case of other means of service, on the date of delivery. Whenever pleadings and other documents must be filed with the Director and served on the other parties, filing and service		time and resources.

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	must occur on the same day and in the same manner, unless the parties agree or the panel directs otherwise. (f) A party must inform the Director and all other parties in writing of any change of address during an arbitration.		

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
Service on Persons Currently Associated with a Member	12301. Service on Persons Currently Associated with a Member If a member and a person currently associated with the member are named as respondents to the same arbitration, service on the person associated with the member may be made on the member or directly on the associated person. If service is made on the member, the member must serve the associated person, even if the member will not be representing the associated person in the arbitration. If the member is not representing the associated person in the arbitration, the member must notify, and provide the associated person's current address to, all parties and the Director.	Rule 10314. Initiation of Proceedings (c) Service and Filing with the Director of Arbitration (2) If a member firm and a person associated with the member firm are named parties to an arbitration proceeding at the time of the filing of the Statement of Claim, service on the person associated with the member firm may be made on the associated person or the member firm, which shall perfect service upon the associated person. If the member firm does not undertake to represent the associated person, the member firm shall serve the associated person with the Statement of Claim, shall advise all parties and the Director of Arbitration of that fact, and shall provide such associated person's current address.	No substantive change.
Filing an Initial Statement of	12302. Filing an Initial Statement of Claim	10314. Initiation of Proceedings	Paragraph (c) of the rule codifies current practice,

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Claim	(a) Filing Claim with the Director (1) To initiate an arbitration, a claimant must file the following with the Director: • Signed and dated Uniform Submission Agreement; and • A statement of claim specifying the relevant facts and remedies requested. The claimant may include any additional documents supporting the statement of claim. (2) A claimant may use the online claim notification and filing procedure to complete part of the arbitration claim filing process through the Internet. To commence this process, a claimant may complete a Claim Information Form that can be accessed through www.nasd.com. In completing the Claim Information Form, the claimant may attach an electronic version of the statement of claim to the form, provided it does not exceed 50 pages. Once this online	Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows: (a) Statement of Claim (1) The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and	and provides notice to claimants that they must pay all fees required at the time of filing.

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	form has been completed, an NASD Dispute Resolution Tracking Form will be generated and displayed for the claimant to reproduce as necessary. The claimant shall then file with the Director the rest of the materials required in subparagraph (1) of the rule, along with a hard copy of the NASD Dispute Resolution Tracking Form. (b) Number of Copies The claimant must file enough copies of the statement of claim, if it has not been submitted electronically, and the signed Uniform Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party. (c) Fees At the time the statement of claim is filed, the claimant must pay all required filing fees. (d) Service by Director Unless the statement of claim is deficient under Rule 12307, the	one (1) copy of the Statement of Claim. <u>(2) A Claimant or counsel (referred to herein collectively as "Claimant") may use the online claim notification and filing procedure to complete part of the arbitration claim filing process through the Internet. To commence this process, a Claimant may complete a Claim Information Form that can be accessed through an NASD Web site. In completing the Claim information Form, the Claimant may attach an electronic version of the Statement of Claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, an NASD Dispute Resolution Tracking Form will be generated and displayed for the Claimant to reproduce as necessary. The Claimant shall then file with the Director of Arbitration the rest of the materials required in subparagraph (1), above, along with a hard copy of the NASD</u>	

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	Director will send a copy of the statement of claim, the Uniform Submission Agreement, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.	<u>Dispute Resolution Tracking Form.</u>	
Answering the Statement of Claim	12303. Answering the Statement of Claim (a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim: - Signed and dated Uniform Submission Agreement; and - An answer specifying the relevant facts and available defenses to the statement of claim. The respondent must include any additional documents supporting the answer to the statement of claim. Parties that fail to answer in the time provided may be subject to default proceedings under Rule 12801. (b) The answer to the statement of	10314. Initiation of Proceedings (b) Answer – Defenses, Counterclaims, and/or Cross-Claims (1) Within 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all relevant facts	Paragraph (b) of the rule provides that parties serving third party claims must include all materials served by the parties or the Director up until that point in the proceeding. This provision is intended to ensure that newly added parties are able to obtain all relevant materials in a timely manner, and to expedite and streamline the administration of the arbitration. This will not apply to copies of the Code or Discovery Guide, which NASD will continue to provide.

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	claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director. (c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the Uniform Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with additional copies for each arbitrator. (d) If the answer to the statement of claim contains any counterclaims, cross claims or third party claims, the respondent must pay all required filing fees.	and available defenses to the Statement of Claim submitted and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based upon any existing dispute, claim, or controversy subject to arbitration under this Code. * * * Rule 10314 Initiation of Proceedings (b) Answer – Defenses, Counterclaims, and/or Cross-Claims (3) Respondent(s) shall serve each party with a copy of any Third-Party Claim. The Third-Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with	

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		any deposit required under the schedule of fees.	
Answering Counterclaims	12304. Answering Counterclaims (a) A claimant must directly serve an answer to a counterclaim on each other party within 20 days of receipt of the counterclaim. At the same time, the claimant must file the answer to the counterclaim with the Director, with additional copies for each arbitrator. (b) The answer must include the relevant facts and available defenses to the counterclaim. The claimant may include any additional documents supporting the answer to the counterclaim.	10314. Initiation of Proceedings (b) Answer – Defenses, Counterclaims, and/or Cross-Claims (4) The Claimant shall serve each party with a Reply to a Counterclaim within ten (10) days of receipt of an Answer containing a Counterclaim. The Reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).	As part of the effort to standardize the time limits in the Code, the time for answering counterclaims has been extended from 10 days to 20 days. (Please see Rule 12305, in which the time to answer a cross claim has been shortened from 45 days to 20 days.) NASD believes that parties who have already filed a pleading in an arbitration should have the same amount of time to respond to a cross or counterclaim, and that 10 days (the time the current Code provides for responding to counterclaims) is too short, and 45 days (the time the current Code provides for responding to cross claims) is too long. NASD believes that 20 days is the appropriate

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
			amount of time for parties to respond to both counter and cross claims.
Answering Cross Claims	12305. Answering Cross Claims (a) A respondent must directly serve an answer to a cross claim on each other party within 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim, whichever is later. At the same time, the respondent must file the answer to the cross claim with the Director, with additional copies for each arbitrator. (b) The answer must include the relevant facts and available defenses to the cross claim. The respondent may include any additional documents supporting the answer to the cross claim.	10314. Initiation of Proceedings (b) Answer – Defenses, Counterclaims, and/or Cross-Claims (2)(C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing.	For the reasons explained in the comment section to Rule 12304, the time to answer a cross claim has been shortened from 45 days to 20 days.
Answering Third Party Claims	12306. Answering Third Party Claims (a) A party responding to a third party claim must directly serve all other	10314. Initiation of Proceedings (b) Answer – Defenses, Counterclaims, and/or Cross-	No substantive change.

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	parties with the following documents within 45 days of receipt of the third party claim: • Signed and dated Uniform Submission Agreement; and • An answer specifying the relevant facts and available defenses to the third party claim. The respondent may include any additional documents supporting the answer to the third party claim. (b) The answer to the third party claim may include any counterclaims, cross claims, or third party claims, specifying all relevant facts and remedies requested. The answer may include any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director. (c) At the same time that the answer to the third party claim is served on the other parties, the third party	Claims (3) . . . Third-Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in subparagraphs (1) and (2) above.	

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	respondent must also file copies of the Uniform Submission Agreement the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator. (d) If the answer to the third party claim contains any counterclaim, cross claim or third party claim, the party must also pay all required filing fees.		
Deficient Claims	12307. Deficient Claims (a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following: • A Uniform Submission Agreement was not filed by each claimant; • The Uniform Submission Agreement was not properly signed and dated; • The Uniform Submission Agreement does not name all parties named in the claim;		New rule. The rule codifies current deficiency practice. NASD believes that providing guidance to parties in the Code regarding what constitutes a deficient claim will help parties avoid deficiencies, which will reduce delay and expedite the administration of arbitrations.

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	• The claimant did not file the correct number of copies of the Uniform Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators; • The claim does not specify the customer's home address at the time of the events giving rise to the dispute; • The claim does not specify the claimant's or the claimant's representative's current address; or • The claimant did not pay all required filing fees, unless the Director deferred the fees. (b) The Director will notify the claimant in writing if the claim is deficient. If all deficiencies are not corrected within 30 days from the time the claimant receives notice, the Director will close the case without serving the claim, and will not refund any filing fees paid by the claimant.		

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	(c) The panel will not consider any counterclaim, cross claim or third party claim that is deficient. The reasons a counterclaim, cross claim or third party claim may be deficient include the reasons listed in paragraph (a). The Director will notify the party making the counterclaim, cross claim or third party claim of the any deficiencies in writing. If all deficiencies are not corrected within 30 days from the time the party making the counterclaim, cross claim or third party claim receives notice of the deficiency, the panel will proceed with the arbitration as though the deficient counterclaim, cross claim or third party claim had not been made.		
Loss of Defenses Due to Untimely or Incomplete Answer	12308. Loss of Defenses Due to Untimely or Incomplete Answer (a) If a party fails to answer any claim within the time period specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under Rule	10314. Initiation of Proceedings (b) Answer – Defenses, Counterclaims, and/or Cross-Claims (2)(A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial to	The order of this rule has been reversed, and current paragraphs (2)(A) and (B) have been condensed into one.

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	12801. (b) If a party answers a claim that alleges specific facts and contentions with a general denial, or fails to include defenses or relevant facts in its answer that were known to it at the time the answer was filed, the panel may bar that party from presenting the omitted defenses or facts at the hearing.	a pleading that states specific facts and contentions may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing. (B) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to specify all available defenses and relevant facts in such party's answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party's Answer at the hearing. C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below, may,	

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		in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing. Such a party may also be subject to default procedures as provided in paragraph (e) below	
Amending Pleadings	12309. Amending Pleadings (a) Before Panel Appointment Except as provided in paragraph (c), a party may amend a pleading at any time before the panel has been appointed. (1) To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rule 12301. (2) To amend any other pleading, a party must serve the amended	10328. Amendments (a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Rule 10314(b). . . .	Paragraph (c) of the new rule. Under the current Code, parties may amend pleadings at any time prior to panel appointment, but, after panel appointment, they must obtain approval to amend a pleading. This means that between the time that the Director consolidates the arbitrator lists and the panel is appointed, a party could amend a pleading to add a party to the proceeding, and the newly-added party would neither be able to participate in NLSS or object to being

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	pleading on each party. At the same time, the party must file the amended pleading with the Director, with additional copies for each arbitrator. If a pleading is amended to add a party to the arbitration, the party amending the pleading must provide each new party with copies of all documents previously served by any party, or sent to the parties by the Director. (b) After Panel Appointment Once a panel has been appointed, a party may only amend a pleading if the panel grants a motion to amend in accordance with Rule 12503. Motions to amend a pleading must include a copy of the proposed amended pleading. If the panel grants the motion to amend, the amended pleading does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise. (c) Amendments to Add Parties	(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.	added to the arbitration. To address this issue, which has been the subject of concern among some users of the forum, the rules governing amending pleadings (12309) and the application of NLSS to newly added parties (12407) have been amended 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. Rule 12309(c) also makes clear that the party to be added after panel appointment must be given an opportunity to be heard before the panel can grant the motion to amend. This change will ensure that a party added to an arbitration by amendment either will be able to participate in NLSS, or will be able to

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	Once the ranked arbitrator lists are due to the Director under Rule 12404(c), no party may amend a pleading to add a new party to the arbitration until a panel has been appointed and the panel grants a motion to add the party. Motions to add a party after panel appointment must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code.		object to being added. (Rule 12407 also clarifies that parties added prior to the cut-off date may participate in NLSS, but parties added by amendment after panel appointment do not have the ability to rank and strike arbitrators under NLSS. However, they may challenge an arbitrator for cause under Rule 12409.)
Answering Amended Claims	12310. Answering Amended Claims (a) If a claim is amended before it has been answered, the respondent's original time to answer is extended by 20 days. (b) If a claim is amended after it has been answered, but before a panel has been appointed, the respondent has 20 days from the time the amended claim is served to serve an amended answer.	10328. Amendments (a) . . . The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 10314(b).	As part of the initiative to standardize time limits in the Code, the time to answer an amended pleading has been extended from 10 business to 20 calendar days.

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	(c) If a claim is amended after a panel has been appointed, the respondent has 20 days from the time the respondent receives notice that the panel has granted the motion to amend the claim to serve an amended answer. (d) The amended answer must be directly served on each other party. At the same time, the amended answer must also be filed with the Director, with additional copies for each arbitrator. (e) If the amended claim adds a new party to the arbitration, the new party's answer is governed by Rule 12306.		
Amendments to Amount in Dispute	12311. Amendments to Amount in Dispute If an amended pleading increases the amount in dispute, all filing fees, surcharges and process fees required by the Code will be recalculated based on the new amount in dispute.	10328. Amendments (b) If a new or amended pleading increases the amount in dispute, all filing fees, hearing session deposits, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.	No substantive change.

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Multiple Claimants	12312. Multiple Claimants (a) One or more parties may join multiple claims together if the claims contain common questions of law or fact and: • The claims assert any right to relief jointly and severally; or • The claims arise out of the same transaction or occurrence, or series of transactions or occurrences. (b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this [R]ule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed.	10314. Initiation of Proceedings (d) Joinder and Consolidation Multiple Parties (1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them, jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert	The provisions relating to joinder and consolidation of multiple parties have been broken into three rules. (See Rules 12312; 12313 and 12314.) Legal terminology has been replaced by shorter, more common phrases. The provisions relating to defenses and awards have been deleted, because NASD believes that they are not necessary, may provide incomplete guidance depending on applicable law, and are more confusing than helpful.

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		rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities. (2) In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.	
Multiple Respondents	12313. Multiple Respondents (a) One or more parties may name one or more respondents in the same arbitration if their claims contain any questions of law or fact common to all respondents and:	10314. Initiation of Proceedings (d) Joinder and Consolidation Multiple Parties	See comment section to Rule 12312.

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	• The claims are asserted against the respondents jointly and severally; or • The claims arise out of the same transaction or occurrence, or series of transactions or occurrences. (b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this [R]ule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed.	(1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them, jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.	

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		(2) In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.	

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Combining Claims	12314. Combining Claims Before ranked arbitrator lists are due to the Director under Rule 12404(c), the Director may combine separate but related claims into one arbitration. Once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.	10314. Initiation of Proceedings (d) Joinder and Consolidation Multiple Parties (3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes. (4) Further determinations with respect to joinder, consolidation, and multiple parties under this paragraph (d) shall be made by the arbitration panel and shall be deemed final.	See comment section to Rule 12312. The rule provides more guidance regarding the time frame for consolidating claims.

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PART IV			
APPOINTMENT; DISQUALIFICATION AND AUTHORITY OF ARBITRATORS			
Neutral List Selection System and Arbitrator Rosters	12400. Neutral List Selection System and Arbitrator Rosters (a) Neutral List Selection System The Neutral List Selection System is a computer system that generates, on a random basis, lists of arbitrators from NASD's rosters of arbitrators for the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the Neutral List Selection System. (b) Arbitrators Rosters NASD maintains the following roster of arbitrators:	10308. Selection of Arbitrators (a) Definitions (3) "Neutral List Selection System" The term "Neutral List Selection System" means the software that maintains the roster of arbitrators and performs various functions relating to the selection of arbitrators.	To make rules shorter and easier to read, the substance of current Rule 10308 has been broken into several rules. See Rules 12400-12409. The definitions in current Rule 10308(a) have been moved to Rule 12100. This rule and the rules that follow include a series of proposed changes to the NLSS system. Those changes include: • Shifting to a random (as opposed to the current rotational) system of generating

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	• A roster of non-public arbitrators as defined in Rule 12100(n); • A roster of public arbitrators as defined in Rule 12100(r); and • A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c). (c) Eligibility for Chairperson Roster In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by NASD or have substantially equivalent training or experience and: • Have a law degree and are 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		arbitrator names for the lists sent to parties (12400(a)); • Creating a separate list of public chair-qualified arbitrators from which the chairperson of the panel will be selected (12400(b) and (c)); • Eliminating the ability of parties to unilaterally request arbitrators with particular expertise (see current Rule 10308(b)(4)(B)); 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 (12403). NASD believes that these modifications to NLSS will

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	through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.		streamline and simplify the arbitrator selection process, and that the creation of a chairperson list will enhance the quality of NASD arbitrations. <u>For purposes of Rule 12400(c), substantially equivalent training or experience would include service as a judge or administrative hearing officer, chairperson training offered by another recognized dispute resolution forum, or the like.</u> In addition, the proposed changes will make the NLSS component of NASD's proposed new computerized case management system, CMS/MATRICS simpler and less expensive to program and implement.
Number of Arbitrators	12401. Number of Arbitrators (a) Claims of \$25,000 or Less	10308. Selection of Arbitrators	Under the rule: • For claims under

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	If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800. (b) Claims of More Than \$25,000 Up To \$50,000 If the amount of a claim is more than \$25,000 but not more than \$50,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless any party requests a panel of three arbitrators. (c) Claims of More Than \$50,000; Unspecified or Non-Monetary Claims If the amount of a claim is more than \$50,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.	(b)(1) Composition of Arbitration Panel (A) Claims of \$50,000 or Less If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration panel composed of one public arbitrator, unless the parties agree to the appointment of a non-public arbitrator. (i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition. (ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators	\$25,000, the single arbitrator could no longer request a three-arbitrator panel; and For claims involving between \$25,000 and \$50,000, any party could still request a three-arbitrator panel, but the single arbitrator could not. (In a related change, Rule 12402(a) provides that a single arbitrator must be from the chairperson roster unless the parties agree otherwise.) NASD believes that these changes will help to streamline the administration of smaller claims, and minimize the cost of bringing and prosecuting small claim. NASD believes that requiring that single arbitrators be chair-qualified will help ensure

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		be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition. (B) Claims of More Than \$50,000 If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.	the quality of single arbitrator proceedings.
Composition of Arbitration Panels	12402. Composition of Arbitration Panels (a) If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster, unless the parties agree in writing otherwise. (b) If the panel consists of three arbitrators, one will be a non-public	10308. Selection of Arbitrators (b)(1) Composition of Arbitration Panel (A) Claims of \$50,000 or Less If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration	As part of the proposed changes to NLSS, the rule provides that in single arbitrator cases, the single arbitrator will be selected from the new chair-qualified roster (See 12400(b) and (c), unless the parties agree otherwise. The rule also provides that in three-

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	arbitrator and two will be public arbitrators, one of whom will be selected from the chairperson roster, unless the parties agree in writing otherwise.	panel composed of one public arbitrator, unless the parties agree to the appointment of a non-public arbitrator. (i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition. (ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition. (B) Claims of More Than	arbitrator cases, one arbitrator will be selected from the chair-qualified roster.

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		\$50,000 If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.	
Generating and Sending Lists to the Parties	12403. Generating and Sending Lists to the Parties (a) Generating Lists (1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of seven public arbitrators from the NASD's chairperson roster. (2) If the panel consists of three arbitrators, the Neutral List Selection System will generate: • A list of seven arbitrators from the NASD's non-public arbitrator roster; • A list of seven arbitrators from the NASD's public arbitrator roster;	10308. Selection of Arbitrators (b)(2) One List for Panel of One Arbitrator If one arbitrator will serve as the arbitration panel, the Director shall send to the parties one list of public arbitrators, unless the parties agree otherwise. (3) Two Lists for Panel of Three Arbitrators If three arbitrators will serve as the arbitration panel, the Director shall send two lists to the parties, one with the names of public arbitrators and one with the names of non-public	As part of the proposed changes to NLSS, the rule provides that parties would receive a chairperson list as well as non-public and public lists, and that each list would contain seven names. As part of the proposed changes to NLSS, the ability of a party to unilaterally request arbitrators with certain expertise in current Rule 10308(b)(4)(B) has been eliminated. Like the current rule, the proposed rule states that NLSS excludes arbitrators

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	and • A list of seven public arbitrators from the NASD's chairperson roster. (3) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System. (b) Sending Lists to Parties (1) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past ten years and other background information for each arbitrator listed. (2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information,	arbitrators. The lists shall contain numbers of public and non-public arbitrators, in a ratio of approximately two to one, respectively, to the extent possible, based on the roster of available arbitrators. (4) Preparation of Lists (A) Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the lists of public and non-public arbitrators on a rotating basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest identified within the Neutral List Selection System database. (B) If a party requests that the lists include arbitrators with expertise classified in the Neutral List Selection System, the lists may include some arbitrators having the designated expertise. (5) Sending of Lists to Parties	from the lists sent to parties based on current conflicts of interest identified by NLSS. NLSS currently checks for conflicts based on matches between arbitrator and party identification numbers and the member conflicts database maintained by NASD. This is a preliminary check that is intended to remove arbitrators from the list who have an obvious conflict with a party based on employment history or other information contained in the database. It does not, nor is it intended to, replace the more detailed check performed by parties once the lists have been sent.

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	the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12404(c).	The Director shall send the lists of arbitrators to all parties at the same time approximately 30 days after the last answer is due. (6) Information About Arbitrators The Director shall send to the parties employment history for each listed arbitrator for the past 10 years and other background information. If a party requests additional information about an arbitrator, the Director shall send such request to the arbitrator, and shall send the arbitrator's response to all parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for the parties to return the ranked lists under paragraph (c)(2).	
Striking and Ranking	12404. Striking and Ranking Arbitrators	10308. Selection of Arbitrators	As part of the proposed changes to NLSS, the rule

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Arbitrators	(a) Each separately represented party may strike up to five of the arbitrators from each list for any reason by crossing through the names of the arbitrators. Two names must remain on each list. (b) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately. (c) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.	(c) Striking, Ranking, and Appointing Arbitrators on Lists (1) Striking and Ranking Arbitrators (A) Striking An Arbitrator A party may strike one or more of the arbitrators from each list for any reason. (B) Ranking - Panel of One Arbitrator Each party shall rank all of the arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on. (C) Ranking - Panel of Three Arbitrators Each party shall rank all of the	provides that parties would have five strikes, and would have to leave two names on the lists. This change is intended to avoid the possibility that all names will be stricken from the lists, which is intended to minimize the likelihood that the Director will have to appoint an arbitrator not on the original lists sent to parties. (See Rule 12406.)

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		public arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each party separately shall rank all of the non-public arbitrators remaining on the list, using the same procedure. (2) Period for Ranking Arbitrators; Failure to Timely Strike and Rank A party must return to the Director the list or lists with the rankings not later than 20 days after the Director sent the lists to the parties, unless the Director has extended the period. If a party does not timely return the list or lists, the Director shall treat the party as having retained all the arbitrators on the list or lists and as having no preferences.	
Combining Lists	12405. Combining Lists	10308. Selection of Arbitrators	As part of the proposed changes to NLSS, the rule

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	For each arbitrator classification (public, non-public, and chairperson), the Director will prepare combined ranked lists of arbitrators based on the parties' numerical rankings, as follows: • The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents. • The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party. • The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.	(c) Striking, Ranking, and Appointing Arbitrators on Lists (3) Process of Consolidating Parties' Rankings The Director shall prepare one or two consolidated lists of arbitrators, as appropriate under paragraph (b)(2) or (b)(3), based upon the parties' numerical rankings. The arbitrators shall be ranked by adding the rankings of all claimants together and all respondents together, including third-party respondents, to produce separate consolidated rankings of the claimants and the respondents. The Director shall then rank the arbitrators by adding the consolidated rankings of the claimants, the respondents, including third-party respondents, and any other party together, to produce a single consolidated ranking number, excluding arbitrators who were stricken by any party.	includes the chairperson list. Otherwise, the process for combining lists remains the same.

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Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List	12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List (a) If a panel consists of one arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined chairperson list. (b) If a panel consists of three arbitrators, the Director will appoint: • The highest-ranked available non-public arbitrator from the combined non-public arbitrator list; • The highest-ranked available public arbitrator from the combined public arbitrator list, and • The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel. (c) If the number of arbitrators available to serve from the combined list(s) is not sufficient to fill an initial panel, the Director will appoint one or	10308. Selection of Arbitrators (c) Striking, Ranking, and Appointing Arbitrators on Lists (4) Appointment of Arbitrators (A) Appointment of Listed Arbitrators The Director shall appoint arbitrators to serve on the arbitration panel based on the order of rankings on the consolidated list or lists, subject to availability and disqualification. (B) Discretion to Appoint Arbitrators Not on List If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director shall appoint one or more arbitrators to complete the arbitration panel. Unless the parties agree	As part of the proposed changes to NLSS, the rule incorporates a chairperson list, and current Rule 10308(c)(5), governing selection of chairperson, has been deleted. In the past, there have been questions regarding when appointment of arbitrators occurs. To address this question, paragraph (d) of the rule clarifies that appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. In addition, the arbitrator oath currently in Rule 10327 has been moved here.

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	more arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in Rule 12100(n)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 12403 and the parties will have the right to challenge the arbitrators as provided in Rule 12410. (d) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute NASD's arbitrator oath or affirmation.	otherwise, the Director may not appoint a non-public arbitrator under paragraphs (a)(4)(B) or (a)(4)(C). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1). (5) Selecting a Chairperson for the Panel The parties shall have [15] <u>five</u> days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties cannot agree, the Director shall appoint a chairperson from the panel as follows: (A) The Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties as long as the person is not an attorney, accountant, or other professional who has devoted 50% or more of his or her professional or business activities, within the last two	

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		years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters. (B) If the most highly ranked public arbitrator is subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the other public arbitrator, as long as the person also is not subject to the exclusion set forth in subparagraph (A). (C) If both public arbitrators are subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties.	
Additional Parties	12407. Additional Parties (a) If a party is added to an arbitration after the Director sends the lists generated by the Neutral List Selection System to the parties, but before parties must return the ranked lists to the Director, the Director will	10308. Selection of Arbitrators (c) Striking, Ranking, and Appointing Arbitrators on Lists (6) Additional Parties	Paragraph (b) of the rule is new. In the current Code, parties may amend pleadings at any time prior to panel appointment, but, after panel appointment, they must obtain approval to amend a pleading. This

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	send the lists to the newly added party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike the arbitrators in accordance with Rule 12404. If the newly added party returns the lists within 20 days after the date upon which the Director sent the lists to the party, the Director will include the new party's lists when combining rankings under Rule 12405. If the Director does not receive the list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preference among the listed arbitrators. (b) Once the ranked lists are due to the Director under Rule 12404, no party may amend a pleading to add a new party to the arbitration until a panel is appointed and grants a motion to add the party. Motions to add a party must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. If	If a party is added to an arbitration proceeding before the Director has consolidated the other parties' rankings, the Director shall send to that party the list or lists of arbitrators and permit the party to strike and rank the arbitrators. The party must return to the Director the list or lists with numerical rankings not later than 20 days after the Director sent the lists to the party. The Director shall then consolidate the rankings as specified in this paragraph (c).	means that between the time that the Director consolidates the arbitrator lists and the panel is appointed, a party could amend a pleading to add a party to the proceeding, and the newly-added party would neither be able to participate in NLSS or object to being added to the arbitration. To address this issue, which has been the subject of concern among some users of the forum, the rules governing amending pleadings (12309) and the application of NLSS to newly added parties (12407) 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. Rule 12309(c) also makes clear that the party to be

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	the panel grants the motion to add the party, the newly added party may not strike and rank the arbitrators, but may challenge an arbitrator for cause in accordance with Rule 12410.		added after panel appointment must be given an opportunity to be heard before the panel can grant the motion to amend. This change will ensure that a party added to an arbitration by amendment either will be able to participate in NLSS, or will be able to object to being added. Rule 12407 also clarifies that parties added prior to the cut-off date may participate in NLSS, but parties added by amendment after panel appointment do not have the ability to rank and strike arbitrators under NLSS. However, they may challenge an arbitrator for cause under Rule 12409.
Disclosures Required of Arbitrators	12408. Disclosures Required of Arbitrators (a) Before appointing arbitrators to a panel, the Director will notify the	10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify (a) Each arbitrator shall be	No substantive change. <u>Subparagraph (a)(4) has been added to reflect approval of a proposed rule change by the SEC</u>

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	arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including: (1) Any direct or indirect financial or personal interest in the outcome of the arbitration; (2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone whom the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; [and] (3) Any such relationship or circumstances involving members of the arbitrator's families or the arbitrator's current employers, partners, or business associates[.]; <u>and</u>	required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose: (1) Any direct or indirect financial or personal interest in the outcome of the arbitration; (2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators must disclose any such relationships or circumstances that they have with any party or its counsel, or with any individual whom they have been told will be a witness. They must also disclose any such relationship or circumstances involving members of their families or	<u>addressing this issue after the Code had been filed.</u>

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	<u>(4) Any existing or past service as a mediator.</u> (b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered. (c) The Director will inform the parties to the arbitration of any information disclosed to the Director under this Rule unless the arbitrator who disclosed the information declines appointment or voluntarily withdraws from the panel as soon as the arbitrator learns of any interest, relationship or circumstance that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.	their current employers, partners, or business associates. (b) Persons who are requested to accept appointment as arbitrators must make a reasonable effort to inform themselves of any interests, relationships or circumstances described in paragraph (a) above. (a) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered. * * * (e) The Director shall inform the	

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		parties to an arbitration proceeding of any information disclosed to the Director under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator. * * * * <u>IM-10308. Arbitrators Who Also Serve as Mediators</u> * * * * <u>Arbitrators who also serve as mediators shall disclose that fact on their arbitrator disclosure forms.</u>	
Arbitrator Recusal	12409. Arbitrator Recusal Any party may ask an arbitrator to		New rule. The rule provides

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	recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.		guidance to parties on how recusal requests may be made, and decided. The rule provides that the subject of the request for recusal must decide the request because the weight of case law on the subject prohibits removal of an arbitrator by other arbitrators.
Removal of Arbitrator by Director	12410. Removal of Arbitrator by Director (a) Before First Hearing Session Begins Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative. (1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the	10308. Selection of Arbitrators (d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias (1) Disqualification By Director After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be	No substantive change. The rule combines the substance of current Rules 10308(d), 10312(d), and 10313, which all address disqualification and removal of arbitrators.

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	arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this Rule will be resolved in favor of the customer. (2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator. (b) After First Hearing Session Begins After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 12408 that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of NASD Dispute Resolution may	disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice. (2) Removal by Director After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed. (3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest	

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	exercise the Director's authority under this paragraph (b).	or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. * * * (f) Challenges by Customers In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer. * * * 10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify (d) Removal by Director (1) The Director may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule. (2) After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only	

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		on information not known to the parties when the arbitrator was selected. The Director's authority under this subparagraph (2) may be exercised only by the Director or the President of NASD Dispute Resolution. (3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.	
Replacement of Arbitrators	12411. Replacement of Arbitrators (a) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this Rule, unless the parties agree in writing to proceed with only the remaining arbitrators.	10308. Selection of Arbitrators (d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias (3) Vacancies Created by	Under the current Code, the provisions regarding replacement of arbitrators are contained in several different sections, and contain numerous cross-references to other rules. The rule consolidates the various current rules, but

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	(b) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator of the required classification remaining on the combined list. (c) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the required classification to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403, and the parties shall have the right to object to the arbitrator as provided in Rule 12410. (d) If the Director must appoint a non-public arbitrator under paragraph (c), the Director may not appoint a non-public arbitrator as defined in Rule 12100(n)(2) or (3), unless the parties agree otherwise.	Disqualification or Resignation Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).	contains no substantive change, other than extending the option of electing to proceed with only the remaining arbitrators to all stages of the proceeding, but eliminating the 5-day limitation on electing that option, both of which are contained in current Rule 10313. NASD believes that parties should have the right to jointly decide to proceed with only the remaining arbitrators regardless of when the replacement occurs, and that the parties should be able to elect that option up until the time the appointment of the replacement arbitrator occurs.

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		* * * (4) Appointment of Arbitrators (B) Discretion to Appoint Arbitrators Not on List If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director shall appoint one or more arbitrators to complete the arbitration panel. Unless the parties agree otherwise, the Director may not appoint a non-public arbitrator under paragraphs (a)(4)(B) or (a)(4)(C). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1). * * * 10308. Selection of Arbitrators (4) "non-public arbitrator"	

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		The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and: (A) is, or within the past three years, was: (i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer); (ii) registered under the Commodity Exchange Act; (iii) a member of a commodities exchange or a registered futures association; or (iv) associated with a person or firm registered under the Commodity Exchange Act; (B) is retired from engaging in any of the business activities listed in subparagraph (4)(A); (C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the	

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		business activities listed in subparagraph (4)(A); or (D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities. * * * 10313. Disqualification or Other Disability of Arbitrators (a) In the event that any arbitrator, after the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the Director shall appoint a replacement	

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		arbitrator to fill the vacancy and the hearing shall continue. In the alternative, if all parties agree to proceed with any remaining arbitrator(s), they shall inform the Director in writing within 5 business days of notification of the vacancy, and the remaining arbitrator(s) shall continue with the hearing and determination of the controversy. (b) The Director shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director concerning the replacement arbitrator's background. If the arbitration proceeding is subject to Rule 10308, the party may exercise his or her right to challenge the replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the name of the	

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		arbitrator challenged and the basis for such challenge. If the arbitration proceeding is not subject to Rule 10308, within the time remaining prior to the next scheduled hearing session or the 10 day period provided under Rule 10311, whichever is shorter, a party may exercise the party's right to challenge the replacement arbitrator as provided in Rule 10311.	
Director's Discretionary Authority	12412. Director's Discretionary Authority The Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations.	10308. Selection of Arbitrators (e) Discretionary Authority The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and the Rule 10000 Series to facilitate the appointment of arbitration panels and the resolution of arbitration disputes.	No substantive change.
Jurisdiction of Panel and Authority to Interpret the	12413. Jurisdiction of Panel and Authority to Interpret the Code The panel has the authority to	10324. Interpretation of Provisions of Code and Enforcement of Arbitrator Rulings	No substantive change.

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Code	interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties.	The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.	
Determinations of Arbitration Panel	12414. Determinations of Arbitration Panel All rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or the Code or applicable law provides, otherwise.	10325. Determination of Arbitrators All rulings and determinations of the panel shall be by a majority of the arbitrators.	The rule reflects that under the Code, and applicable law, some decisions may be [may] <u>made</u> by a single member of a three-arbitrator panel. For example, Rule 12503 provides that some motions may be decided by a single arbitrator. Also, applicable law may permit a single arbitrator to issue a subpoena. (See Rule 12512.)

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
PART V			
PREHEARING PROCEDURES AND DISCOVERY			
Initial Prehearing Conference	12500. Initial Prehearing Conference (a) After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel, except as provided in paragraph (c) of this Rule. (b) The Initial Prehearing Conference will generally be held by telephone. Unless the parties agree otherwise, the Director must notify each party of the time and place of the Initial Prehearing Conference at least 20 days before it takes place. (c) At the Initial Prehearing Conference, the panel will set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters. The parties may agree to forgo the Initial Prehearing Conference only if they jointly provide		New rule; codifies current practice. The rule would codify NASD's current practice of scheduling an initial pre-hearing conference in every case unless the parties provide certain scheduling and other information. The practice streamlines and expedites the administration of arbitrations. The rule will provide guidance to parties regarding NASD procedure.

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	the Director with the following information, in writing, with additional copies for each arbitrator, before the Initial Prehearing Conference is scheduled to be held: • A statement that the parties accept the panel; • Whether any other prehearing conferences will be held, and if so, for each prehearing conference, a minimum of four mutually agreeable dates and times, and whether the chairperson or the full panel will preside; • A minimum of four sets of mutually agreeable hearing dates; • A discovery schedule; • A list of all anticipated motions, with filing and response due dates; and • A determination regarding whether briefs will be submitted, and, if so, the due date for the briefs and any reply briefs.		

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Other Prehearing Conferences	12501. Other Prehearing Conferences (a) At a party's request, or at the discretion of the panel, the panel may schedule one or more additional prehearing conferences regarding any outstanding preliminary matters, including: • Discovery disputes; • Motions; • Witness lists and subpoenas; • Stipulations of fact; • Unresolved scheduling issues; • Contested issues on which the parties will submit briefs; and • Any other matter that will simplify or expedite the arbitration. (b) The panel will determine the time and place of any additional prehearing conferences. Prehearing conferences will generally be held by telephone. Unless the full panel is required under	10321. General Provisions Governing Pre-Hearing Proceedings (d) Pre-Hearing Conference (1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issue which relates to the pre-hearing process or to the hearing, including but not limited to exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulation of facts, identification and briefing of	No substantive change.

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	Rule 12503, prehearing conferences may be held before a single arbitrator, generally the chairperson.	contested issues, and any other matters which will expedite the arbitration proceedings. (2) Any issues raised at the pre-hearing conference that are not resolved may be referred to a single member of the arbitration panel for decision.	
Recording Prehearing Conferences	12502. Recording Prehearing Conferences (a) Except as provided in Rule 12504, prehearing conferences will not be tape-recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party. (b) If a prehearing conference is tape-recorded, the Director will provide a copy of the tape to any party upon request for a nominal fee.		New rule. The rule will provide guidance to parties and arbitrators regarding when and under what circumstances prehearing conferences are recorded.
Motions	12503. Motions (a) Motions (1) A party may make motions in writing, or orally during any hearing		New rule. Although the current Code does not address motions, parties are using motions in arbitration with increasing frequency. The lack of

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	session. Before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. Every motion, whether written or oral, must include a description of the efforts made by the moving party to resolve the matter before making the motion. (2) Written motions are not required to be in any particular form, and may take the form of a letter, legal motion, or any other form that the panel decides is acceptable. Written motions must be served directly on each other party, at the same time and in the same manner. Written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties. (3) Except as provided by Rule 12504, written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise. (4) Motions to amend a pleading after panel appointment pursuant to Rule		guidance in the Code regarding how and when motions may be made, the time for responding to motions, and who decides motions, had created confusion among parties and arbitrators. The rule would provide guidance to parties and arbitrators, and help to establish procedural uniformity in the forum. Paragraph (a)(2) makes clear that written motions do not need to be formal or take any specific form, but may simply be letters, or any other form the panel decides is acceptable.

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	12309(b) must be accompanied by copies of the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. If a party moves to amend a pleading to add a party, the motion must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with paragraph Rule 12309(c) without waiving any rights or objections under the Code. (b) Responding to Motions Except as provided by Rule 12504, parties have 10 days from the receipt of a written motion to respond to the motion, unless the moving party agrees to an extension of time, or the Director or the panel decides otherwise. Responses to written motions must be served directly on each other party, at the same time and in the same manner. Responses to written motions must also be filed with the Director, with additional		

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	copies for each arbitrator, at the same time and in the same manner in which they are served on the parties. (c) Authority to Decide Motions (1) The Director decides motions relating to use of the forum under Rule 12203 and removal of an arbitrator under Rule 12410. (2) Motions relating to combining or separating claims or arbitrations, or changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed. (3) Discovery-related motions are decided by one arbitrator, generally the chairperson. The arbitrator may refer such motions to the full panel either at his or her own initiative, or at the request of a party. The arbitrator must refer motions relating to privilege to the full panel at the request of a party. (4) Motions for arbitrator recusal under Rule 12409 are decided by the arbitrator who is the subject of the		

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	request. (5) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 12206, or to decide a claim or arbitration before a hearing under Rule 12504, unless the Code provides or the parties agree otherwise.		
Motions to Decide Claims Before a Hearing on the Merits	12504. Motions to Decide Claims Before a Hearing on the Merits (a) Except as provided in Rule 12206, motions to decide a claim before a hearing are discouraged and may only be granted in extraordinary circumstances. (b) Motions under this rule must be made in writing. Unless the parties agree or the panel determines otherwise, motions under this rule must be served at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion. (c) Motions under this rule will be decided by the full panel. The panel may not grant a motion under this rule		New rule. Currently, the Code does not address the authority of the panel to decide dispositive motions before a hearing on the merits. Consequently, arbitrator decisions with respect to it lack uniformity, and the issue of arbitrator authority to decide such motions has generated confusion and collateral litigation. Generally, NASD believes that parties have the right to a hearing in arbitration. However, NASD also acknowledges that in certain extraordinary

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	unless a prehearing conference on the motion is held, or waived by the parties. Prehearing conferences to consider motions under this rule will be tape-recorded. (d) The panel may issue sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.		circumstances, it would be unfair to require a party to proceed to a hearing. To strike the appropriate balance between discouraging dispositive motions, but allowing them in certain circumstances, the rule would: • provide that, except for motions relating to the eligibility of claims under the Code's six year time limit (12206), motions that would resolve a claim before a hearing on the merits are discouraged, and may only be granted in extraordinary circumstances; • require that a prehearing conference before the full panel must be held to discuss the motion before the panel could decide it; and

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			allow the panel to issue sanctions against a party for making a dispositive motion in bad faith.
Cooperation of Parties in Discovery	12505. Cooperation of Parties in Discovery The parties must cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration.	10321. General Provisions Governing Pre-Hearing Proceedings (a) Requests for Documents and Information The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration.	One of the most frequent comments made by users of the NASD forum is that the NASD's Discovery Guidelines are routinely ignored, resulting in significant delay and the frequent need for arbitrator intervention in the discovery process. To address these concerns, the revised Code would codify the discovery procedures currently outlined in the NASD Discovery Guide in Rules 12505-12511. The rules would extend the time parties have to respond to Document Production Lists and other requests, but would also provide more serious

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			consequences when parties fail to respond, or when parties frivolously object to production of documents or information.
Document Production Lists	12506. Document Production Lists (a) Applicability of Document Production Lists When the Director serves the statement of claim, the Director will provide the NASD Discovery Guide and Document Production Lists to the parties. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person. Other Document Production Lists may also apply, depending on the specific cause(s) of action alleged. (b) Time for Responding to Document Production Lists Unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by		New rule. Based on NASD Discovery Guidelines. The rule would clarify that it is mandatory for parties to either produce documents on relevant document production lists, to explain why production is not possible, or to object. To address concerns of many frequent users of the forum that the current time frame to respond to discovery is unrealistic, and may therefore lead to unnecessary disputes, the rule also would extend the initial time to respond to discovery lists from 30 to 60 days.

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	amendment or third party claim, within 60 days of the date that their answer is due, parties must either: • Produce to all other parties all documents in their possession or control that are described in the Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged; • Identify and explain the reason that specific documents described in Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged, cannot be produced within the required time, and state when the documents will be produced; or • Object as provided in Rule 12508. <u>(c) Redacted Information</u> <u>For purposes of this rule and Rule 12507, if a party redacts any portion of a document prior to production, the</u>		<u>Paragraph (c) has been added to this rule to include language from the Discovery Guide that was inadvertently omitted.</u>

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	<u>redacted pages (or range of pages) shall be labeled "redacted."</u>		
Other Discovery Requests	12507. Other Discovery Requests (a) Making Other Discovery Requests Parties may also request additional documents or information from any party by serving a written request directly on the party. Such requests may be served: • On the claimant, or any respondent named in the initial statement of claim, 45 days or more after the Director serves the statement of claim; and • On any party subsequently added to the arbitration, 45 days or more after the statement of claim is served on that party. At the same time, the party must serve copies of the request on all other parties. Any request for documents or information not described in applicable Document Production Lists should be specific	10321. General Provisions Governing Pre-Hearing Proceedings (a) Requests for Documents and Information The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing. (b) Document Production and Information Exchange (1) Any party may serve a	To address concerns of many frequent users of the forum that the current time frame to respond to discovery is unrealistic, and may therefore lead to unnecessary disputes, the rule would extend the initial time to respond to discovery lists from 30 to 60 days.

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	and relate to the matter in controversy. (b) Responding to Other Discovery Requests Unless the parties agree otherwise, within 60 days from the date a discovery request other than the Document Production Lists is received, the party receiving the request must either: • Produce the requested documents or information to all other parties; • Identify and explain the reason that specific requested documents or information cannot be produced within the required time, and state when the documents will be produced; or • Object as provided in Rule 12508.	written request for information or documents ("information request") upon another party 45 calendar days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.	
Objecting to Discovery; Waiver of Objection	12508. Objecting to Discovery; Waiver of Objection (a) If a party objects to producing any document described in Document Production Lists 1 or 2, any other	10321. General Provisions Governing Pre-Hearing Proceedings (b) Document Production and Information Exchange	The rule would provide more guidance regarding the procedures for objecting to a discovery request.

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	applicable Document Production List, or any document or information requested under Rule 12507, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties at the same time and in the same manner. Objections should not be filed with the Director. Parties must produce all applicable listed documents, or other requested documents or information not specified in the objection. (b) Any objection not made within the required time is waived unless the panel determines that the party had substantial justification for failing to make the objection within the required time.	(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.	
Motions to Compel Discovery	12509. Motions to Compel Discovery (a) A party may make a motion asking the panel to order another party to produce documents or information if the other party has: Failed to comply with Rule 12506	10321. General Provisions Governing Pre-Hearing Proceedings (b) Document Production and Information Exchange (3) Any response to objections to an information request shall be served on all parties and	The rule would provide more guidance regarding the procedures for resolving discovery disputes.

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	or 12507; or • Objected to the production of documents or information under Rule 12508. (b) Motions to compel discovery must be made, and will be decided, in accordance with Rule 12503. Such motions must include the disputed document request or list, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.	filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.	
Depositions	12510. Depositions Depositions are strongly discouraged in arbitration. Upon motion of a party, the panel may permit depositions, but only under very limited circumstances, including: • To preserve the testimony of ill or dying witnesses; • To accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not		New rule. Based on NASD Discovery Guide.

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	otherwise be required to participate in the hearing; • To expedite large or complex cases; and • If the panel determines that extraordinary circumstances exist.		
Discovery Sanctions	12511. Discovery Sanctions (a) Failure to cooperate in the exchange of documents and information as required under the Code may result in sanctions. The panel may issue sanctions against any party in accordance with Rule [12211] <u>12212</u>(a) for: • Failing to comply with the discovery provisions of the Code, unless the panel determines that there is substantial justification for the failure to comply; or • Frivolously objecting to the production of requested documents or information. (b) The panel may dismiss a claim, defense or proceeding with prejudice		New rule. Based on NASD Discovery Guide. The rule would codify the authority of arbitrators to address non-compliance with discovery rules or orders. NASD believes this provision will help alleviate discovery abuse in NASD arbitrations.

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	in accordance with Rule [12211] <u>12212(c)</u> for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.		
Subpoenas	12512. Subpoenas (a) To the extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. Subpoenas for documents or the appearance of witnesses may be issued as provided by law. (b) If a subpoena is issued, the issuing party must send copies of the subpoena to all other parties at the same time and in the same manner in which the subpoena was issued.	10322. Subpoenas and Power to Direct Appearances (a) Subpoenas The arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law. All parties shall be given a copy of a subpoena upon its issuance. Parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.	The rule has been modified to require that if a subpoena is issued, the issuing party must send copies to all other parties at the same time and in the same manner as the subpoena was issued. This is intended to ensure that parties receive notice of the subpoena in a timely manner.
Authority of Panel to Direct Appearances of Witnesses and Production of Documents	12513. Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas (a) Upon motion of a party, the panel	10322. Subpoenas and Power to Direct Appearances (b) Power to Direct Appearances and Production	No substantive change.

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Without Subpoenas	may order the following without the use of subpoenas: • The appearance of any employee or associated person of a member of NASD; or • The production of any documents in the possession or control of such persons or members. (b) Unless the panel directs otherwise, the party requesting the appearance of witnesses by, or the production of documents from, non-parties under this rule shall pay the reasonable costs of the appearance and/or production.	of Documents The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any member of the Association and/or the production of any records in the possession or control of such persons or members. Unless the arbitrator(s) directs otherwise, the party requesting the appearance of a person or the production of documents under this Rule shall bear all reasonable costs of such appearance and/or production.	
Exchange of Documents and Witness Lists Before Hearing	12514. Exchange of Documents and Witness Lists Before Hearing (a) Documents and Other Materials At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or	10321. General Provisions Governing Pre-Hearing Proceedings (a) Pre-Hearing Exchange At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of	Frequent users of the forum have advised NASD that the current document exchange procedures often result in the exchange of material that has already been exchanged, which can cause delay and add to the cost of arbitration

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	control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing. (b) Witness Lists At least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. At the same time, each party must file their witness lists with the Director, with enough copies for each arbitrator. (c) Exclusion of Documents or Witnesses Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with this rule at the hearing, unless the panel determines that good cause exists for the failure to produce the document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or	documents in their possession they intend to present at the hearing and shall identify witnesses they intend to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.	without significantly assisting parties in preparing for hearing. Under the rule, parties would only be required to exchange copies of documents that have not already been produced to the other parties. This would save parties time, reduce cost, and would still ensure that parties exchange documents that they intend to use at the hearing. The rule also makes clear that the documents are not to be filed with the Director or the arbitrators before the hearing. To make witness lists more useful, the rule would require that witness lists include the names and business affiliations of any witnesses the parties intend to present at the hearing.

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	impeachment purposes based on developments during the hearing.		The rule would also strengthen the consequences of non-compliance with the rule, by creating a presumption that parties may not present any documents not produced, or witnesses not identified, in accordance with the rule, unless the panel determines that good cause exists.

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PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD			
Required Hearings	12600. Required Hearings (a) Hearings will be held, unless: • The arbitration is administered under Rule 12800 or Rule 12801; • The parties agree otherwise in writing; or • The arbitration has been settled, withdrawn or dismissed. (b) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner. (c) The Director will notify the parties of the time and place at least 10 days before the hearing begins, unless the parties agree to a shorter time.	10303. Hearing Requirements—Waiver of Hearing (a) Any dispute, claim or controversy except as provided in Rule 10203 (Simplified Industry Arbitration) or Rule 10302 (Simplified Arbitration), shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence. (b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of	The [proposed] rule would clarify that hearings are held in most arbitrations, but that hearings are not required to be held if: the arbitration is administered under the Simplified Arbitration rule; the parties agree to waive the hearing; or the arbitration has been settled, withdrawn or dismissed. (See Rules 12700, 12701, and 12702.) The rule also incorporates the substance of current [r]Rule 10315 regarding scheduling of hearings. The rule leaves the manner of notification to the Director's discretion, and eliminates the reference to the "place" of

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		further evidence. * * * 10315. [Designation of Time and Place] <u>Determination of Hearing Location</u> <u>(a) Designation of Time and Place of Hearing</u> The Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing, and shall give notice of the time and place at least 15 business days prior to the date fixed for the first meeting by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings,	the first hearing, because that is now covered by Rule [12207] <u>12213</u>, regarding selection of hearing locations. To expedite the administration of arbitrations, the rule also shortens the notice time from 15 business days to 10 calendar days.

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		and shall give notice as the arbitrators may determine. Attendance at a meeting waives notice thereof. <u>(b) Foreign Hearing Location</u> <u>(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:</u> <u>(A) met NASD background qualifications for arbitrators;</u> <u>(B) received training on NASD arbitration rules and procedures; and</u> <u>(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.</u> <u>(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign</u>	

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		<u>hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rules 10205 and 10332.</u>	
Postponement of Hearings	12601. Postponement of Hearings (a) When a Hearing May Be Postponed A hearing may be postponed only: • By agreement of the parties; • By the Director, in extraordinary circumstances; • By the panel, in its own discretion; or • By the panel, upon motion of a party. The panel may not grant a motion to postpone a hearing	10319. Adjournments (a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration. (b) If an adjournment requested by a party is granted after arbitrators have been appointed, the party requesting the adjournment shall pay a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed \$1,500, for a second or	Paragraph (a) of the [proposed] rule has been amended to provide that the panel may not grant requests to postpone a hearing that are made within 10 days of a scheduled hearing session unless the panel determines that good cause exists. This provision is intended to reduce the number of last minute requests for postponements, a practice that many users of the forum believe results in unnecessary delay and

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	made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists. (b) Postponement Fees (1) Except as otherwise provided, a postponement fee will be charged for each postponement agreed to by the parties, or granted upon request of one or more parties. The fee will equal the applicable hearing session fee under Rule 12902. The panel may allocate the fee among the party or parties that agreed to or requested the postponement. The panel may also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement. The panel may waive the fees. (2) No postponement fee will be charged if a hearing is postponed: Because the parties agree to	subsequent adjournment requested by that party. The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall allocate the fees among the requesting parties. (c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration. <u>(d) If an adjournment request is made by one or more parties and granted within three business days before a scheduled hearing session, the party or parties making the request shall pay an additional fee of \$100 per arbitrator. If more than one party requests the adjournment, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or portion of the \$100 per</u>	unfairness to parties. In paragraph (b) of the rule, the fee would no longer increase for a second or subsequent request by the same party. This change is intended to simplify the rule and to avoid confusion when one party requesting a postponement has made a previous request, but one or more of the other parties requesting the same postponement have not. The rule also gives the panel the authority to allocate the postponement fees among non-requesting parties if the panel determines that the non-requesting party caused or contributed to the need for the postponement. In paragraph (c) of the rule, the panel may

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	submit the matter to mediation at NASD; - By the panel in its own discretion; or - By the Director in extraordinary circumstances. (c) Dismissal of Arbitration Due to Multiple Postponements If all parties jointly request, or agree to, more than two postponements, the panel may dismiss the arbitration without prejudice.	<u>arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that a request results in the adjournment of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.</u>	dismiss the arbitration without prejudice if all parties jointly request more than two postponements. The change is intended to clarify that arbitrators have the authority to dismiss the arbitration upon a fourth or subsequent request. The current rule might be interpreted to limit the arbitrators' authority to the third joint request.
Attendance at Hearings	12602. Attendance at Hearings The parties and their representatives are entitled to attend all hearings. The panel will decide who else may attend any or all of the hearings.	10317. Attendance at Hearings The attendance or presence of all persons at hearings including witnesses shall be determined by the arbitrators.	No substantive change.

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		However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.	
Failure to Appear	12603. Failure to Appear If a party fails to appear at a hearing after having been notified of the time, date and place of the hearing, the panel may decide that the hearing may go forward, and may render an award as though all parties had been present.	10318. Failure to Appear If any of the parties, after due notice, fails to appear at a hearing or at any continuation of a hearing session, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.	No substantive change.
Evidence	12604. Evidence (a) The panel will decide what evidence to admit. The panel is not required to follow state or federal rules of evidence. (b) Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party	10323. Evidence The arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.	Paragraph (b) of the rule has been added to clarify that a document produced in discovery is not automatically admissible at the hearing. The admissibility of any document can be challenged.

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	may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.		
Witness Oath	12605. Witness Oath All witnesses must testify under oath or affirmation.	10327. Oaths of the Arbitrators and Witnesses Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.	The arbitrator oath requirement has been moved to Rule 12406(d), governing appointment of arbitrators.
Record of Proceedings	12606. Record of Proceedings (a) Tape Recording (1) Except as provided in paragraph (b), the Director will make a tape recording of every hearing. The Director will provide a copy of the tape to any party upon request for a nominal fee. (2) The panel may order the parties to provide a transcription of the tape recording. If the panel orders a transcription, copies of the	10326. Record of Proceedings (a) A verbatim record by stenographic reporter or a tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record	This rule has been amended to reflect current practice, to eliminate possible confusion regarding the official record, and to give parties more specific guidance on how proceedings will be recorded and how the cost of the record will be allocated among the parties.

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	transcription must be provided to each arbitrator and each party. The panel will determine which party or parties must pay the cost of making the transcription and copies. (3) The tape recording is the official record of the proceeding, even if it is transcribed. (b) Stenographic Record (1) Any party may make a stenographic record of the hearing. Even if a stenographic record is made, the tape recording will be the official record of the proceeding, unless the panel determines otherwise. If the panel determines in advance that the stenographic record will be the official record, the Director will not make a tape recording. (2) If the stenographic record is the official record of the proceeding, a copy must be provided to the Director, each arbitrator, and each other party. The cost of making and copying the stenographic record will be borne by the party electing to make the stenographic record, unless the panel	be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators. (b) A verbatim record of mediation conducted pursuant to the Rule 10400 Series shall not be kept.	

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	decides that one or more other parties should bear all or part of the costs.		
Order of Presentation of Evidence and Arguments	12607. Order of Presentation of Evidence and Arguments Generally, the claimant shall present its case, followed by the respondent's defense. The panel has the discretion to vary the order in which the hearing is conducted, provided that each party is given a fair opportunity to present its case.	IM-10317. Closing Arguments In response to recent questions concerning the order of closing argument in arbitration proceedings conducted under the auspices of the National Association of Securities Dealers, Inc., it is the practice in these proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedures may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.	This rule expands the scope of current IM-10317 to provide guidance to parties regarding the order of proceedings.
Closing The Record	12608. Closing the Record (a) The panel will decide when the record is closed. Once the record is closed, no further submissions will be accepted from any party.		New rule. The current Code contains a rule (10329) that allows the panel to reopen the hearings before the award is rendered. This implies that the panel had finished

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	(b) In cases in which no hearing is held, the record is presumed to be closed when the Director sends the pleadings to the panel, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the record is presumed to be closed when the last such submission is due. (c) In cases in which a hearing is held, the panel will generally close the record at the end of the last hearing session, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the panel will inform the parties when the submissions are due and when the record will close.		hearing the case and was in the process of determining the award. However, the current Code does not have a rule stating when the panel can close the record and begin deliberating to determine the award. Thus, the rule has been added to reflect current practice and provide an explanation on how a panel decides to close a record.
Reopening the Record	12609. Reopening the Record The panel may reopen the record on its own initiative or upon motion of any party at any time before the award is rendered, unless prohibited by applicable law.	10329. Reopening of Hearings Where permitted by applicable law, the hearings may be reopened by the arbitrators on their own motion or at the discretion of the arbitrators upon application of a party at any time before the award is rendered.	No substantive change.

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD			
Dismissal of Proceedings Prior to Award	12700. Dismissal of Proceedings Prior to Award (a) The panel must dismiss an arbitration or a claim at the joint request of the parties to that arbitration or claim. The dismissal will be with or without prejudice, depending on the request of the parties. (b) The panel may dismiss a claim or an arbitration: • Upon motion of a party under Rule 12206 or Rule 12504; or • On its own initiative under Rule [12211] <u>12212</u>(c) or Rule 12601(c).	10305. Dismissal of Proceedings (a) At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to their judicial remedies, or to any dispute resolution forum agreed to by the parties, without prejudice to any claims or defenses available to any party. (b) The arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.	The new rule cross-references the sections of the Code that authorize the panel to dismiss a claim prior to award in certain circumstances: Rule 12206 (six-year eligibility rule); Rule 12504 (motions to dismiss prior to award); Rule [12211] <u>12212</u> (sanctions); and Rule 12601 (postponements).

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Settlement	12701. Settlement (a) Parties to an arbitration may agree to settle their dispute at any time. Parties who settle their dispute must notify the Director. The Director will continue to administer the arbitration, and fees may continue to accrue, until the Director receives written notice of the settlement. The parties do not need to disclose the terms of the settlement agreement to the Director or to NASD Dispute Resolution, but members and associated persons may have reporting obligations under the rules of NASD. (b) Settling parties will remain responsible for fees incurred under the Code. If parties to a settlement fail to agree on the allocation of any outstanding fees, those fees will be divided equally among the settling parties, except member surcharges and prehearing and hearing process fees required by the Code, which will remain the responsibility of the member party or parties.	10306. Settlements (a) Parties to an arbitration may agree to settle their dispute at any time. (b) <u>If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments, pursuant to Rule 10319.</u> (c) The terms of a settlement agreement do not need to be disclosed to the Association. However, [the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions. If] <u>if the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.</u>	The rule clarifies that parties must notify the Director in writing that a settlement has been reached to prevent any additional fees from accruing.
Withdrawal of	12702. Withdrawal of Claims		New rule. This rule is

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Claims	(a) Before a claim has been answered by a party, the claimant may withdraw the claim against that party with or without prejudice. (b) After a claim has been answered by a party, the claimant may only withdraw it against that party with prejudice unless the panel decides, or the claimant and that party agree, otherwise.		intended to provide guidance to parties and arbitrators regarding withdrawals and to prevent prejudice to a party that has filed an answer.

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PART VIII SIMPLIFIED ARBITRATION AND DEFAULT PROCEEDINGS			
Simplified Arbitration	12800. Simplified Arbitration (a) Applicability of Rule This rule applies to arbitrations involving \$25,000 or less, exclusive of interest and expenses. Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations. (b) Single Arbitrator All arbitrations administered under this rule will be decided by a single public arbitrator appointed from the NASD's chairperson roster in accordance with the Neutral List Selection System, unless parties agree in writing otherwise. (c) Hearings (1) No hearing will be held in	10302. Simplified Arbitration (a) Any dispute, claim, or controversy arising between a public customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding \$25,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided. (b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the Claim. Sufficient additional copies of the Submission Agreement and the Statement	The simplified arbitration rule has been significantly shortened and simplified. Currently, in addition to the procedures that are unique to simplified arbitrations, Rule 10302 repeats some, but not all, of the general provisions that apply to both regular and simplified cases. The rule includes only those provisions that are unique to simplified cases. The rule does not include special time limits or deadlines for pleadings in simplified cases as the current rule does, because the time limits would now be the same as those in regular cases. Frequent users of the forum, as well

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	arbitrations administered under this rule unless the customer requests a hearing. (2) If no hearing is held, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties. If a hearing is held, the regular provisions of the Code relating to prehearings and hearings, including fee provisions, will apply. (d) Discovery and Additional Evidence (1) Document Production Lists, described in Rule 12506, do not apply to arbitrations subject to this rule. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings. (2) The parties may request documents and other information from each other. All requests for the	of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether a hearing is demanded. (c) The Claimant shall pay a non-refundable filing fee and shall remit a hearing session deposit as specified in Rule 10332 of this Code upon the filing of the Submission Agreement. The final disposition of the fee or deposit shall be determined by the arbitrator. (d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission	as NASD staff, report that the time limits in simplified cases are routinely extended under the current rule. Requests for extensions would now be governed by the same rule (Rule 12207) as in other cases. Rule 12207 provides that deadlines set by the Code may be extended by the Director for good cause. In simplified cases, the Director would consider the expedited nature of simplified cases in determining whether good cause existed in a given case. NASD believes that this approach will simplify and streamline the administration of simplified cases, and, because extensions are routine under the current Code, will not result in significant delay in the administration of simplified cases. Under the rule, the single

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	production of documents and other information must be served on all other parties, and filed with the Director, within 30 days from the date that the last answer is due. Any response or objection to a discovery request must be served on all other parties and filed with the Director within 10 days of the receipt of the requests. The arbitrator will resolve any discovery disputes. (e) Increases in Amount in Dispute If any pleading increases the amount in dispute to more than \$25,000, the arbitration will no longer be administered under this rule, and the regular provisions of the Code will apply. If an arbitrator has been appointed, that arbitrator will remain on the panel. If a three-arbitrator panel is required or requested under Rule 12401, the remaining arbitrators will be appointed by the Director in accordance with Rule 12406(b). If no arbitrator has been appointed, the entire panel will be appointed in accordance with the Neutral List Selection System.	Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third- Party Respondent with an executed Submission Agreement, a copy of the Respondent's Answer containing the Third-Party Claim, and a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in	arbitrator would be selected from the chairperson roster, unless the parties agreed otherwise. The rule would eliminate the ability of the single arbitrator to require a hearing. The customer could still request a hearing. Under the rule, the single arbitrator would no longer be able to request a three-[arbitrator] <u>arbitrator</u> panel, and the arbitrator would no longer have the option of dismissing without prejudice a counterclaim or other responsive pleading that increased the amount in dispute above the simplified case threshold. If a pleading increased the amount in dispute above the threshold, the case would be administered under the regular

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	(f) Arbitrator Honoraria NASD will pay the arbitrator an honorarium of \$125 for each arbitration administered under this rule.	the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$25,000 exclusive of attendant costs and interest, the arbitrator may refer the Claim, Counterclaim and/or Third-Party Claim, if any, to a panel of three (3) arbitrators in accordance with Rule 10308 or, he may dismiss the Counterclaim and/or Third-Party Claim without prejudice to the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counterclaim and/or Third-Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 10332. (e) All parties shall serve on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a copy of the Answer, Counterclaim, Third-Party Claim, Amended Claim,	provisions of the Code. Both changes are intended to streamline and simplify the administration of arbitrations.

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		or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either (1) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a Reply to any Counterclaim or, (2) if the amount of the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings shall be discontinued without prejudice to the rights of the parties. (f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry appointed by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and	

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		evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration. (g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause. (h) (1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable. (2) If a hearing is demanded or consented to in accordance with paragraph (f), the General Provisions Governing Pre-Hearing Proceedings under Rule 10321 shall apply. (3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of	

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		notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its request for document production on all parties. Any response or objections to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The appointed arbitrator shall resolve all requests under this Rule on the papers submitted. (i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel which shall decide the matter in controversy. (j) In any case where there is more than one (1) arbitrator, the majority shall be public arbitrators. (k) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional	

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		documentation relating to the pleadings. (l) Except as otherwise provided herein, the general arbitration rules of the Association shall be applicable to proceedings instituted under this Rule.	
	12801. Default Proceedings (a) Applicability of Rule A claimant may request default proceedings against any respondent that falls within one of the following categories and fails to file an answer within the time provided by the Code. • A member whose membership has been terminated, suspended, canceled, or revoked; • A member that has been expelled from the NASD; • A member that is otherwise defunct; or • An associated person whose	10314. Initiation of Proceedings (e) Default Procedures (1) A Respondent, Cross-Respondent, or Third-Party Respondent that fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to paragraph (b)(5), may be subject to default procedures, as provided in this paragraph, if it is: (A) a member whose membership has been terminated, suspended, canceled, or revoked;	No substantive change.

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	registration is terminated, revoked, or suspended. (b) Initiating Default Proceedings (1) To initiate default proceedings against one or more respondents that fail to file a timely answer, the claimant must notify the Director in writing and must send a copy of the notification to all other parties at the same time and in the same manner as the notification was sent to the Director. If there is more than one claimant, all claimants must agree in writing to proceed under this rule against a defaulting respondent before this rule may be used. (2) If the Director receives written notice from the claimant and determines that the requirements for proceeding under this rule have been met, the Director will: • Notify all parties that the claim against the defaulting respondent will proceed under this rule; and • Appoint a single arbitrator in accordance with the Neutral List	(B) a member that has been expelled from the NASD; (C) a member that is otherwise defunct; or (D) an associated person whose registration is terminated, revoked, or suspended. (2) If all Claimants elect to use these default procedures, the Claimant(s) shall notify the Director in writing and shall send a copy of such notification to all other parties at the same time and in the same manner as the notification was sent to the Director. (3) If the case meets the requirements for proceeding under default procedures, the Director shall notify all parties. (4) The Director shall appoint a single arbitrator pursuant to Rule 10308 to consider the Statement of Claim and other documents presented by the Claimant(s). The arbitrator may request additional information	

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	Selection System to consider the statement of claim and other documents presented by the claimant. (c) Hearings No hearing shall be held. The arbitrator may request additional information from the claimant before rendering an award. (d) Amendments to Increase Relief Requested Claimants may not amend a claim to increase the relief requested from the defaulting respondent after the Director has notified the parties that the claim will proceed under this rule. (e) Awards (1) The arbitrator may not issue an award based solely on the nonappearance of a party. Claimants must present a sufficient basis to support the making of an award. The arbitrator may not award damages in an amount greater than the damages requested in the statement of claim,	from the Claimant(s) before rendering an award. No hearing shall be held, and the default award shall have no effect on any non-defaulting party. (5) The Claimant(s) may not amend the claim to increase the relief requested after the Director has notified the parties that the claim will proceed under default procedures. (6) An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor. The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim, and may not award any other relief that was not requested in the Statement of Claim. (7) If the Respondent files an Answer after the Director has notified the parties that the claim will proceed under default	

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	and may not award any other relief that was not requested in the statement of claim. (2) The default award shall have no effect on any non-defaulting party. (f) Respondent's Answer If a defaulting respondent files an answer after the Director has notified the parties that the claim against that respondent will proceed under this rule but before an award has been issued, the proceedings against that respondent under this rule will be terminated and the claim against that respondent will proceed under the regular provisions in the Code.	procedures but before an award has been rendered, the proceedings under this paragraph shall be terminated and the case will proceed under the regular procedures.	

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PART IX FEES AND AWARDS			
Fees Due When a Claim is Filed	12900. Fees Due When a Claim is Filed (a) Fees for Claims Filed by Customers, Associated Persons and Other Non-Members (1) Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee in the amount indicated in the schedule below. [See note.] The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 12307. [Note: For purposes of this chart, the fee tables have been placed in appendices to the chart. See Filing Fees for Claims Filed by Customers, Associated Persons or Other Non-Members in Appendix 1.]	10332. Schedule of Fees for Customer Disputes (a) At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration. Where multiple hearing sessions are required, the arbitrators may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedules	One of the most frequent criticisms of the current Code is that the fee schedules are difficult to understand, particularly with respect to what claimants must pay at the time of filing. Currently, claimants must pay a non-refundable filing fee, and an initial hearing session deposit that may be refundable under certain circumstances. In addition, parties also must pay hearing session fees for each hearing session. Although the filing fee and the initial hearing session deposit are both due upon filing, they are presented in the Code as separate fees, making it hard for some parties to understand the total amount due upon

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	(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event the amount of the filing fee may not be less than \$[75] <u>50</u> or more than \$1,800. (b) Fees for Claims Filed by Members (1) Members filing a claim, counterclaim, cross claim, or third party claim must pay a filing fee in the amount indicated in the schedule below. Failure to pay the required amount will result in a deficiency under Rule 12307. [See Fees for Claims Filed by Members table in Appendix 2.] (2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event the filing fee may not be less than \$[350] <u>225</u> or	below. (b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator. (c) The arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis, and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing	filing. To address this issue, the filing fee and the hearing session deposit have been combined into one single fee that is paid when a claim is filed. Although what is now the refundable hearing session deposit would no longer be paid separately, an amount equal to the current hearing session deposit or a portion thereof may be refunded if the case is settled at least 10 days prior to the hearing on the merits. (Under the current Code, the initial hearing session deposit may be refunded if the case is settled 8 days prior to the hearing on the merits; this has been changed to 10 days as part of the overall effort to standardize the time frames used in the Code.) The consolidation of the

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	more than \$3,700. (c) Partial Refund of Filing Fee (1) If a claim is settled or withdrawn more than 10 days before the date that a hearing on the merits under Rule 12600 is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902. No refund will be paid if the NASD receives notice that a claim is settled or withdrawn within 10 days of the date that the hearing on the merits under Rule 12600 is scheduled to begin. [See Partial Refund for Settlement or Withdrawal More Than 10 Days Before Hearing on the Merits table in Appendix 3.] (2) If the claim does not request or specify money damages, and the Director determined that the hearing session fee should be a different	in which case hearing session fees shall be computed as provided in paragraph (d). The arbitrator(s) may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid. If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above. Amounts deposited by a party shall be applied against forum fees, if any. In addition to forum fees, the arbitrator(s) may	filing fee and the hearing session deposit is intended to make it easier for claimants to understand how much they have to pay when they file a claim and what, if any, portion of that fee may be refunded. In addition, several sets of brackets in the filing fee schedule would be condensed. Currently, there are 14 separate fee brackets in the customer filing fee schedule. Some of the fees for different brackets are the same; others are separated by amounts ranging from \$25-\$100. The result is a schedule that is confusing and difficult to read. To simplify the schedule, the customer filing fee brackets would be reorganized as follows: the \$25,000-\$30,000 bracket (\$600) and the \$30,000-50,000 bracket (\$625) would be combined, and

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	amount than the amount specified in the schedule in Rule 12902, the amount of the refund will be the amount of the hearing session fee determined by the Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902. (d) Reimbursement of Filing Fees In the award, the panel may order a party to reimburse another party for all or part of any filing fee paid.	determine in the award the amount of costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise. (d) For claims filed separately which are subsequently joined or consolidated under Rule 10314(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such fees shall be borne.	the filing fee for the new bracket would be \$600; and the \$1 million - \$3 million bracket (\$1,700), the \$3 million - \$5 million bracket (\$1,800), the \$5 million - \$10 million bracket (\$1,800) and the over \$10 million bracket (\$1,800) would be combined, and the filing fee for the new bracket would be \$1,800. The proposed changes would not result in an increase in the total amount of fees paid by customers or associated persons when filing a claim, except that for claims of \$30,000 to \$50,000, the customer's overall filing fees would decrease by \$50, and for claims of \$1 million to \$3 million, the customer's overall filing fees would increase by \$100. Corresponding changes would be made to the member filing fee

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SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee for a public customer shall be \$250 and the non-refundable filing fee for an industry party shall be \$500. The hearing session deposit to be remitted by a party shall be \$1,000 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule. (f) The Association shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference. (g) Any matter submitted and thereafter settled or withdrawn	schedule.

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne. (h) Reserved (i) Reserved (j) Reserved (k) Schedule of Fees For purposes of the schedule of fees, the term "claim" includes Claims, Counterclaims, Third-Party Claims, and Cross-Claims. Any such claim made	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
		by a customer or associated person is treated as a customer claim for purposes of the schedule of fees. Any such claim made by a member is an industry claim. [See Customer or Associated Person Claimant Table in Appendix 1. See Member Claimant Table in Appendix 2.]	
Member Surcharge	12901. Member Surcharge (a) Member Surcharge (1) A surcharge in the amount indicated in the schedule below will be assessed against each member that: - Files a claim, counterclaim, cross claim, or third party claim under the Code; - Is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code; or - Employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim,	10333. Member Surcharge and Process Fees (a) Member Surcharge (1) Each member that is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-Claim or Third-Party Claim, shall be assessed a surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding. (2) For each associated person who is named, the surcharge shall be assessed against the	No substantive change.

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	or third party claim filed and served under the Code. [See Member Surcharge table in Appendix 4.] (2) If the claim does not request or specify money damages, the Director may determine that the member surcharge should be more or less than the amount specified in the schedule above, but in any event the amount of the member surcharge may not be less than \$150 or more than \$3,750. (3) If the claim is filed by the member, the surcharge is due when the claim is filed. If the claim is filed against the member, or against an associated person employed by the member at the time of the events giving rise to the dispute, the surcharge is due when the claim is served in accordance with Rule 12300. (4) No member shall be assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.	member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. (3) The surcharge shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the arbitration panel: (A) denies all of a customer's claims against the member or associated person; and (B) allocates all forum fees assessed pursuant to Rule 10332(c) against the customer. The Director may also refund or cancel the member surcharge in extraordinary circumstances. [See Table in Appendix 4.] (4) For purposes of this Rule, service is perfected when the Director of Arbitration properly serves the Respondents to	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	(b) Refund of Member Surcharge (1) The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the panel: • Denies all of a customer's claims against the member or associated person; and • Allocates all fees assessed pursuant to Rule 12902(a) against the customer. (2) The Director may also refund or waive the member surcharge in extraordinary circumstances.	such proceeding under Rule 10314 of the Code. (5) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable surcharge shall be \$1,500 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
Hearing Session Fees, and Other Costs and Expenses	12902. Hearing Session Fees, and Other Costs and Expenses (a) Hearing Session Fees (1) Hearing session fees will be charged for each hearing session. The total amount chargeable to the parties for each hearing session is based on the amount in dispute, as specified in the schedule below. [See Note.] In the award, the panel will determine the amount of each hearing session fee that each party must pay. [See <u>Hearing Session Fees</u> table in Appendix 5.] (2) If the claim does not request or specify money damages, the Director may determine that the hearing session fee should be more or less than the amount specified in the schedule above, but in any event the hearing session fee shall not be less than \$50 or more than \$1,200 for each hearing session. (3) If there is more than one claim in a proceeding, the amount of hearing session fees will be based on the	10332. Schedule of Fees for Customer Disputes (b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator. (c) The arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis, and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have	See comments to Rule 12900.

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	largest claim in the proceeding. If any claims are joined or combined under Rules 12312, 12313, or 12314, the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph. (4) If hearing session fees are allocated against a customer in connection with a claim filed by a member or associated person, the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person. No hearing session fees may be assessed against a customer in connection with a claim filed by a member that is dismissed. (b) Payment of Hearing Session Fees (1) The panel may assess the hearing session fees in the award, or may require the parties to pay hearing session fees during the course of the arbitration. The total amount that the	been joined subsequent to filing in which case hearing session fees shall be computed as provided in paragraph (d). The arbitrator(s) may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid. If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above. Amounts deposited by a party shall be applied against forum fees, if any. In addition to forum	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	panel may require the parties to pay for each hearing session during the course of an arbitration may not exceed the total amount chargeable to the parties for each hearing session under the schedule to paragraph (a) of this rule. (2) Any interim hearing session fee payments made by a party under this rule will be deducted from the total amount of hearing session fees assessed against that party in the award. If the amount of interim payments is more than the amount assessed against the party in the award, the balance will be refunded to that party. (c) Assessment of Other Costs and Expenses in Award In its award, the panel must also determine the amount of any costs and expenses incurred by the parties under the Code or that are within the scope of the agreement of the parties, and which party or parties will pay those costs and expenses.	fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise. (d) For claims filed separately which are subsequently joined or consolidated under Rule 10314(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such fees shall be borne.	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal If a claim is settled or withdrawn: • The parties will be subject to an assessment of hearing session fees for hearing sessions already held. • If NASD receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under Rule 12600 is scheduled to begin, parties that paid a filing fee under Rule 12900 will not be entitled to any refund of the filing fee. • The parties will also be responsible for any fee or costs incurred under Rules 12502, 12513, 12601, or 12606 in connection with such hearings. If a case is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by Rule 12701(b).	(f) The Association shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference. (g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
Process Fees Paid by Members	12903. Process Fees Paid by Members (a) Each member that is a party to an arbitration in which more than \$25,000, exclusive of interest and expenses, is in dispute must pay: • A non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 12403(b); and • A non-refundable hearing process fee, due when the parties are notified of the date and location of the hearing on the merits under Rule 12600, as set forth in the schedule below. See Hearing Process Fee Schedule table in Appendix 6. (b) If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose will be charged the process fees, even if the member is not a party. No member shall be assessed more than one prehearing and one hearing process	10333. Member Surcharge and Process Fees (b) Prehearing and Hearing Process Fees (1) Each member that is a party to an arbitration proceeding in which more than \$25,000 is in dispute will pay: (A) a non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 10308(b)(5); and (B) a non-refundable hearing process fee, due when the parties are notified of the date and location of the first hearing session, as set forth in the schedule below. (2) If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be	No substantive change.

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	fee in any arbitration. (c) The panel may not reallocate to any other party any prehearing and hearing process fees paid by a member.	charged the process fees, even if the member is not a party. No member shall be assessed more than one prehearing and one hearing process fee in any arbitration proceeding. (3) The prehearing and hearing process fees shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. [See Hearing Process Fee Schedule table in Appendix 5.]	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
Awards	12904. Awards (a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction. (b) Unless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal. (c) The Director will serve a copy of the award on each party or the representative of the party. The Director will serve the award by using any method available and convenient to the parties and the Director, and that is reasonably expected to cause the award to be delivered to all parties, or their representative, on the same day. Methods the Director may use include, but are not limited to, first class, registered or certified mail, hand delivery, and facsimile or other electronic transmission. [(c)] <u>(d)</u> The panel shall endeavor to render an award within 30 business days from the date the record is	10330. Awards (a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction. (b) Unless the applicable law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal. (c) The Director will serve a copy of the award on each party, or the representative of the party. The Director will serve the award by using any method available and convenient to the parties and the Director, and that is reasonably expected to cause the award to be delivered to all parties, or their counsel, on the same day. Methods the Director may use include, but are not limited to, registered or certified mail, hand delivery, and facsimile or other electronic	No substantive change.

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	closed. (e) The award shall contain the following: • The names of the parties; • The name of the parties' representatives, if any; • An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties; • A summary of the issues, including the type(s) of any security or product, in controversy; • The damages and other relief requested; • The damages and other relief awarded; • A statement of any other issues resolved; • The allocation of forum fees and any other fees allocable by the panel;	transmission. (d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed. (e) The award shall contain the names of the parties, the name of counsel, if any, a summary of the issues, including the type(s) of any security or product, in controversy, the damages and other relief requested, the damages and other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearings, and the signatures of the arbitrators concurring in the award. (f) All awards and their contents shall be made publicly available. (g) Fees and assessments	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	• The names of the arbitrators; • The dates the claim was filed and the award rendered; • The number and dates of hearing sessions; • The location of the hearings; and • The signatures of the arbitrators. (f) The award may contain a rationale underlying the award. (g) All awards shall be made publicly available. (h) Fees and assessments imposed by the arbitrators under the Code shall be paid immediately upon the receipt of the award by the parties. Payment of such fees shall not be deemed ratification of the award by the parties. (i) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the	imposed by the arbitrators under Rules 10205 and 10332 shall be paid immediately upon the receipt of the award by the parties. Payment of such fees shall not be deemed ratification of the award by the parties. (h) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award: (1) if not paid within thirty (30) days of receipt, (2) if the award is the subject of a motion to vacate which is denied, or (3) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).	

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR CUSTOMER DISPUTES**

SUBJECT	PROPOSED RULE	CURRENT RULE	COMMENTS
	date of the award: • If not paid within 30 days of receipt; • If the award is the subject of a motion to vacate which is denied; or • As specified by the panel in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).		

NASD
CODE OF ARBITRATION PROCEDURE
FOR
CUSTOMER DISPUTES

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**PART I INTERPRETATIVE MATERIAL, DEFINITIONS, ORGANIZATION AND
AUTHORITY**

IM 12000. Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

- (a) fail to submit a dispute for arbitration under the NASD Code of Arbitration Procedure ("Code") as required by the Code;
- (b) fail to comply with any injunctive order issued pursuant to the Code;
- (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;
- (d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law;
- (e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD;
- (f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are:
 - (1) customers with a claim against a member or an associated person;
 - (2) associated persons with a claim against a member or an associated person;
 - (3) members with a claim against another member; or
 - (4) members with a claim against an associated person that relates exclusively to a promissory note.

Written waiver by such parties shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This paragraph applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express

terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure.

12100. Definitions

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.

(a) Associated Person

The term "associated person" or "associated person of a member" means a person associated with a member, as that term is defined in paragraph (p).

(b) Board

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

(c) Claim

The term "claim" means an allegation or request for relief.

(d) Claimant

The term "claimant" means a party that files the statement of claim that initiates an arbitration under Rule 12302.

(e) Code

The term "Code" means the Code of Arbitration Procedure for Customer Disputes. For disputes involving only industry parties, see the NASD Code of Arbitration Procedure for Industry Disputes.

(f) Counterclaim

The term "counterclaim" means a claim asserted against a claimant by a respondent.

(g) Cross Claim

The term "cross claim" means a claim asserted by a respondent against another already-named respondent.

(h) Day

Except as otherwise provided, the term “day” means calendar day. If a deadline specified in the Code falls on a Saturday, Sunday or any NASD holiday, the deadline is extended until the next business day.

(i) Director

The term “Director” means the Director of NASD Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes NASD staff to whom the Director has delegated authority.

(j) Dispute

The term “dispute” means a dispute, claim or controversy. A dispute may consist of one or more claims.

(k) Hearing

The term “hearing” means the hearing on the merits of an arbitration under Rule 12600.

(l) Hearing Session

The term “hearing session” means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference.

(m) Member

For purposes of the Code, the term “member” means any broker or dealer admitted to membership in NASD, whether or not the membership has been terminated or cancelled.

(n) Non-Public Arbitrator

The term “non-public arbitrator” means a person who is otherwise qualified to serve as an arbitrator and:

(1) Is or, within the past five years, was:

(A) Associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(B) Registered under the Commodity Exchange Act;

(C) A member of a commodities exchange or a registered futures association; or

(D) Associated with a person or firm registered under the Commodity Exchange Act;

(2) Is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (n)(1);

(3) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (n)(1); or

(4) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

For purposes of this rule, the term "professional work" shall not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(o) Panel

The term "panel" means the arbitration panel, whether it consists of one or more arbitrators.

(p) Person Associated with a Member

The term "person associated with a member" means:

(1) A natural person registered under the Rules of NASD; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with NASD under the By-Laws or the Rules of NASD.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

(q) Prehearing Conference

The term "prehearing conference" means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins.

(r) Public Arbitrator

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) Is not engaged in the conduct or activities described in paragraphs (n)(1)-(4);

(2) Was not engaged in the conduct or activities described in paragraphs (n)(1)-(4) for a total of 20 years or more;

(3) Is not an investment adviser;

(4) Is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (n)(1)-(4); and

(5) Is not the spouse or a family member of a person who is engaged in the conduct or activities described in paragraphs (n)(1)-(4). For the purposes of this [R]ule, the term "family member" means:

(A) The parent, stepparent, child, or stepchild of any person engaged in the conduct or activities described in paragraphs (n)(1)-(4);

(B) A member of the household of a person engaged in the conduct or activities described in paragraphs (n)(1)-(4);

(C) A person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (n)(1)-(4); or

(D) A person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (n)(1)-(4).

For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

(s) Respondent

The term "respondent" means a party against whom a statement of claim or third party claim has been filed.

(t) Statement of Claim

The term "statement of claim" means the initial or amended claim filed by the party or parties initiating the arbitration.

(u) Third Party Claim

The term "third party claim" means a claim asserted against a party not named in the statement of claim or any other previous pleading.

(v) Uniform Submission Agreement

The term "Uniform Submission Agreement" means the NASD Uniform Submission Agreement. The NASD Uniform Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

12101. Applicability of Code and Incorporation by Reference

(a) Applicability of Code

The Code applies to any dispute between a customer and a member or associated person of a member that is submitted to arbitration under Rule 12200 or 12201.

(b) Incorporation by Reference

When a dispute is submitted to arbitration under the Code pursuant to an arbitration agreement, the Code is incorporated by reference into the agreement.

12102. National Arbitration and Mediation Committee

(a) Pursuant to Part V(C)(1)(b) of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan"), 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) Pursuant to the Delegation Plan, 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 quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. 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.

12103. Director of Dispute Resolution

(a) The Board shall appoint a Director of Dispute Resolution. The Director shall perform all the administrative duties relating to arbitrations submitted under the Code. The Director may delegate his or her duties when it is appropriate, unless the Code provides otherwise.

(b) The Director shall consult with the NAMC at the NAMC's request.

(c) The President of NASD Dispute Resolution may perform the Director's duties. If the Director is unable to perform his or her duties, the President of NASD Dispute Resolution may appoint an interim Director.

12104. Effect of Arbitration on NASD Regulatory Activities

(a) Submitting a dispute to arbitration under the Code does not limit or preclude any right, action or determination by NASD that it would otherwise be authorized to adopt, administer or enforce.

(b) Only at the conclusion of an arbitration, any arbitrator may refer to NASD for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD's rules, the federal securities laws, or other applicable rules or laws.

12105. Agreement of the Parties

(a) Except as provided in paragraph (b), if the Code provides that the parties may agree to modify a provision of the Code, or a decision of the Director or the panel, the written agreement of all named parties is required.

(b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive.

PART II GENERAL ARBITRATION RULES

12200. Arbitration Under an Arbitration Agreement or the Rules of NASD

Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:
 - (1) Required by a written agreement; or
 - (2) Requested by the customer.
- The dispute is between a customer and a member or associated person of a member; and
- The dispute arises in connection with the business activities of the member or the associated person, except the insurance business activities of a member that is also an insurance company.

12201. Elective Arbitration

Parties may arbitrate a dispute under the Code if:

- The parties agree in writing to submit the dispute to arbitration under the Code after the dispute arises; and
- The dispute is between a customer and a member, associated person of a member, or other related party; and
- The dispute arises in connection with the business activities of a member or an associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

12202. Claims Against Inactive Members

A claim by or against a member in one of the following categories is ineligible for arbitration under the Code unless the customer agrees in writing to arbitrate after the claim arises:

- A member whose membership is terminated, suspended, cancelled or revoked;
- A member that has been expelled from NASD; or
- A member that is otherwise defunct.

12203. Denial of NASD Forum and Referral to Other Forums

(a) The Director may decline to permit the use of the NASD arbitration forum if the Director determines that, given the purposes of NASD and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health and safety of arbitrators, staff, or parties or their representatives. Only the Director or the President of NASD Dispute Resolution may exercise the Director's authority under this Rule.

(b) Disputes that arise out of transactions in a readily identifiable market may be referred to the arbitration forum for that market, if the claimant agrees.

12204. Class Action Claims

(a) Class action claims may not be arbitrated under the Code.

(b) No claim that is included in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, will be arbitrated under the Code, unless the party bringing the claim shows that it is not participating in the class action, or has withdrawn from the class according to conditions set by the court, if any.

(c) The Director will refer to a panel any dispute as to whether a claim is part of a class action, unless a party asks the court hearing the class action to resolve the dispute within 10 days of receiving notice that the Director has decided to refer the dispute to a panel.

(d) A member or associated person may not enforce any arbitration agreement against a member of a certified or putative class action with respect to any claim that is the subject of the certified or putative class action until:

- The class certification is denied;
- The class is decertified;
- The member of the certified or putative class is excluded from the class by the court; or
- The member of the certified or putative class elects not to participate in the class or withdraws from the class according to conditions set by the court, if any.

This paragraph does not otherwise affect the enforceability of any rights under the Code or any other agreement.

12205. Shareholder Derivative Actions

Shareholder derivative actions may not be arbitrated under the Code.

12206. Time Limits

(a) Time Limitation on Submission of Claims

No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations. However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while NASD retains jurisdiction of the claim.

(d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration

If a party submits a claim to a court of competent jurisdiction, the six-year time limitation will not run while the court retains jurisdiction of the claim matter.

12207. Extension of Deadlines

(a) The parties may agree in writing to extend or modify any deadline for:

- Serving an answer;
- Returning arbitrator or chairperson lists;
- Responding to motions; or
- Exchanging documents or witness lists.

If the parties agree to extend or modify a deadline under this rule, they must notify the Director of the new deadline in writing.

(b) The panel may extend or modify any deadline listed in paragraph (a), or any other deadline set by the panel, either on its own initiative or upon motion of a party.

(c) The Director may extend or modify any deadline or time period set by the Code for good cause. The Director may also extend or modify any deadline or time period set by the panel in extraordinary circumstances.

12208. Representation of Parties

All parties have the right to be represented by counsel during any stage of an arbitration.

12209. Legal Proceedings

During an arbitration, no party may bring any suit, legal action, or proceeding against any other party that concerns or that would resolve any of the matters raised in the arbitration.

12210. Ex Parte Communications

(a) Except as provided in Rule 12211, no party, or anyone acting on behalf of a party, may communicate with any arbitrator outside of a scheduled hearing or conference regarding an arbitration unless all parties or their representatives are present.

(b) No party, or anyone acting on behalf of a party, may send or give any written motion, request, submission or other materials directly to any arbitrator, unless the arbitrators and the parties agree, or the Code provides otherwise.

12211. Direct Communication Between Parties and Arbitrators

(a) This rule provides procedures under which parties and arbitrators may communicate directly.

(b) Only parties that are represented by counsel may use direct communication under this rule. If, during the proceeding, a party chooses to appear *pro se* (without counsel), this rule shall no longer apply.

(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.

(d) Parties may send the arbitrators only items that are listed in an order.

(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.

(f) Copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.

(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.

(h) Parties may not communicate orally with any of the arbitrators outside the presence of all parties.

(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.

12212. Sanctions

(a) The panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel. Unless prohibited by applicable law, sanctions may include, but are not limited to:

- Assessing monetary penalties payable to one or more parties;
- Precluding a party from presenting evidence;
- Making an adverse inference against a party;
- Assessing postponement and/or forum fees; and
- Assessing attorneys' fees, costs and expenses.

(b) The panel may initiate a disciplinary referral at the conclusion of an arbitration.

(c) The panel may dismiss a claim, defense or arbitration with prejudice as a sanction for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective.

12213. Hearing Locations

(a) U.S. Hearing Location

(1) The Director will decide which of NASD's hearing locations will be the hearing location for the arbitration. Generally, the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute.

(2) Before arbitrator lists are sent to the parties under Rule 12403, the parties may agree in writing to a hearing location other than the one selected by the Director.

(3) The Director may change the hearing location upon motion of a party, as set forth in Rule 12503.

(b) Foreign Hearing Location

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

- (A) met NASD background qualifications for arbitrators;
- (B) received training on NASD arbitration rules and procedures; and
- (C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rule 12900(d).

12214. Payment of Arbitrators

(a) Except as provided in paragraph (b) and Rule 12800, NASD will pay the panel an honorarium, as follows:

- \$200 to each arbitrator for each hearing session in which he or she participates; and
- An additional \$75 per day to the chairperson for each hearing on the merits.

(b) The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

PART III INITIATING AND RESPONDING TO CLAIMS

12300. Filing and Serving Documents

(a) Initial statements of claim must be filed with the Director, with enough copies for each other party and each arbitrator. The number of arbitrators is determined in accordance with Rule 12401. The Director will serve the statement of claim on the other parties, and send copies of the statement of claim to each arbitrator.

(b) The parties must serve all other pleadings and other documents directly on each other party. Parties must serve all pleadings on all parties at the same time and in the same manner, unless the parties agree otherwise.

(c) Unless the Code provides otherwise, parties must also file all pleadings and other documents with the Director, with additional copies for each arbitrator. Pleadings and other documents must be filed with the Director at the same time and in the same manner in which they are served on the other parties. Parties filing pleadings and other documents with the Director must include a certificate of service stating the names of the parties served, the date and method of service, and the address(es) to which service was made.

(d) Pleadings and other documents may be filed and served by: first class mail; overnight mail or delivery service; hand delivery; facsimile; or any other method, including electronic mail, that is approved or required by the panel.

(e) Filing and service are accomplished on the date of mailing either by first-class postage prepaid mail or overnight mail service, or, in the case of other means of service, on the date of delivery. Whenever pleadings and other documents must be filed with the Director and served on the other parties, filing and service must occur on the same day and in the same manner, unless the parties agree or the panel directs otherwise.

(f) A party must inform the Director and all other parties in writing of any change of address during an arbitration.

12301. Service on Persons Currently Associated with a Member

If a member and a person currently associated with the member are named as respondents to the same arbitration, service on the person associated with the member may be made on the member or directly on the associated person. If service is made on the member, the member must serve the associated person, even if the member will not be representing the associated person in the arbitration. If the member is not representing the associated person in the arbitration, the member must notify, and provide the associated person's current address to, all parties and the Director.

12302. Filing an Initial Statement of Claim

(a) Filing Claim with the Director

(1) To initiate an arbitration, a claimant must file the following with the Director:

- Signed and dated Uniform Submission Agreement; and
- A statement of claim specifying the relevant facts and remedies requested.

The claimant may include any additional documents supporting the statement of claim.

(2) A claimant may use the online claim notification and filing procedure to complete part of the arbitration claim filing process through the Internet. To commence this process, a claimant may complete a Claim Information Form that can be accessed through www.nasd.com. In completing the Claim Information Form, the claimant may attach an electronic version of the statement of claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, an NASD Dispute Resolution Tracking Form will be generated and displayed for the claimant to reproduce as necessary. The claimant shall then file with the Director the rest of the materials required in subparagraph (1) of the rule, along with a hard copy of the NASD Dispute Resolution Tracking Form.

(b) Number of Copies

The claimant must file enough copies of the statement of claim, if it has not been submitted electronically, and the signed Uniform Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.

(c) Fees

At the time the statement of claim is filed, the claimant must pay all required filing fees.

(d) Service by Director

Unless the statement of claim is deficient under Rule 12307, the Director will send a copy of the Uniform Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.

12303. Answering the Statement of Claim

(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:

- Signed and dated Uniform Submission Agreement; and
- An answer specifying the relevant facts and available defenses to the statement of claim.

The respondent may include any additional documents supporting the answer to the statement of claim. Parties that fail to answer in the time provided may be subject to default proceedings under Rule 12801.

(b) The answer to the statement of claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director.

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the Uniform Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with enough copies for the Director and each arbitrator.

(d) If the answer to the statement of claim contains any counterclaims, cross claims or third party claims, the respondent must pay all required filing fees.

12304. Answering Counterclaims

(a) A claimant must directly serve any answer to a counterclaim on each other party within 20 days of receipt of the counterclaim. At the same time, the claimant must file the answer to the counterclaim with the Director with additional copies for each arbitrator.

(b) The answer must include the relevant facts and available defenses to the counterclaim. The claimant may include any additional documents supporting the answer to the counterclaim.

12305. Answering Cross Claims

(a) A respondent must directly serve an answer to a cross claim on each other party within 20 days from the date that the respondent's answer to the statement of claim is due, or from the receipt of the cross claim, whichever is later. At the same time, the respondent must file the answer to the cross claim with the Director with additional copies for each arbitrator.

(b) The answer must include the relevant facts and available defenses to the cross claim. The respondent may include any additional documents supporting the answer to the cross claim.

12306. Answering Third Party Claims

(a) A party responding to a third party claim must directly serve all other parties with the following documents within 45 days of receipt of the third party claim:

- Signed and dated Uniform Submission Agreement; and
- An answer specifying the relevant facts and available defenses to the third party claim.

The respondent may include any additional documents supporting the answer to the third party claim.

(b) The answer to the third party claim may also include any counterclaims, cross claims, or third party claims, specifying all relevant facts and remedies requested. The answer may also include any additional documents supporting such claim. When serving a third party claim, the respondent must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by the Director.

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the Uniform Submission Agreement, the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator.

(d) If the answer to the third party claim contains any counterclaim, cross claim or third party claim, the party must also pay all required filing fees.

12307. Deficient Claims

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- A Uniform Submission Agreement was not filed by each claimant;
- The Uniform Submission Agreement was not properly signed and dated;

- The Uniform Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the Uniform Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;
- The claim does not specify the customer's home address at the time of the events giving rise to the dispute;
- The claim does not specify the claimant's or the claimant's representative's current address; or
- The claimant did not pay all required filing fees, unless the Director deferred the fees.

(b) The Director will notify the claimant in writing if the claim is deficient. If all deficiencies are not corrected within 30 days from the time the claimant receives notice, the Director will close the case without serving the claim, and will not refund any filing fees paid by the claimant.

(c) The panel will not consider any counterclaim, cross claim or third party claim that is deficient. The reasons a counterclaim, cross claim or third party claim may be deficient include the reasons listed in paragraph (a). The Director will notify the party making the counterclaim, cross claim or third party claim of the any deficiencies in writing. If all deficiencies are not corrected within 30 days from the time the party making the counterclaim, cross claim or third party claim receives notice of the deficiency, the panel will proceed with the arbitration as though the deficient counterclaim, cross claim or third party claim had not been made.

12308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party fails to answer any claim within the time period specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under Rule 12801.

(b) If a party answers a claim that alleges specific facts and contentions with a general denial, or fails to include defenses or relevant facts in its answer that were known to it at the time the answer was filed, the panel may bar that party from presenting the omitted defenses or facts at the hearing.

12309. Amending Pleadings

(a) Before Panel Appointment

Except as provided in paragraph (c), a party may amend a pleading at any time before the panel has been appointed.

(1) To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rule 12301.

(2) To amend any other pleading, a party must serve the amended pleading on each party. At the same time, the party must file the amended pleading with the Director, with additional copies for each arbitrator. If a pleading is amended to add a party to the arbitration, the party amending the pleading must provide each new party with copies of all documents previously served by any party, or sent to the parties by the Director.

(b) After Panel Appointment

Once a panel has been appointed, a party may only amend a pleading if the panel grants a motion to amend in accordance with Rule 12503. Motions to amend a pleading must include a copy of the proposed amended pleading. If the panel grants the motion to amend, the amended pleading does not need to be re-served on the other parties, the Director, or the panel, unless the panel determines otherwise.

(c) Amendments to Add Parties

Once the ranked arbitrator lists are due to the Director under Rule 12404(c), no party may amend a pleading to add a new party to the arbitration until a panel has been appointed and the panel grants a motion to add the party. Motions to add a party after panel appointment must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code.

12310. Answering Amended Claims

(a) If a claim is amended before it has been answered, the respondent's original time to answer is extended by 20 days.

(b) If a claim is amended after it has been answered, but before a panel has been appointed, the respondent has 20 days from the time the amended claim is served to serve an amended answer.

(c) If a claim is amended after a panel has been appointed, the respondent has 20 days from the time the respondent receives notice that the panel has granted the motion to amend the claim to serve an amended answer.

(d) The amended answer must be directly served on each other party. At the same time, the amended answer must also be filed with the Director, with additional copies for each arbitrator.

(e) If the amended claim adds a new party to the arbitration, the new party's answer is governed by Rule 12306.

12311. Amendments to Amount in Dispute

If an amended pleading increases the amount in dispute, all filing fees, surcharges and process fees required by the Code will be recalculated based on the new amount in dispute.

12312. Multiple Claimants

(a) One or more parties may join multiple claims together if the claims contain common questions of law or fact and:

- The claims assert any right to relief jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed.

12313. Multiple Respondents

(a) One or more parties may name one or more respondents in the same arbitration if the claims contain any questions of law or fact common to all respondents and:

- The claims are asserted against the respondents jointly and severally; or
- The claims arise out of the same transaction or occurrence, or series of transactions or occurrences.

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed.

12314. Combining Claims

Before ranked arbitrator lists are due to the Director under Rule 12404(c), the Director may combine separate but related claims into one arbitration. Once a panel has been appointed, the panel may reconsider the Director's decision upon motion of a party.

**PART IV APPOINTMENT, DISQUALIFICATION, AND AUTHORITY OF
ARBITRATORS**

12400. Neutral List Selection System and Arbitrator Rosters

(a) Neutral List Selection System

The Neutral List Selection System is a computer system that generates, on a random basis, lists of arbitrators from NASD's rosters of arbitrators for the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the Neutral List Selection System.

(b) Arbitrators Rosters

NASD maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in Rule 12100(n);
- A roster of public arbitrators as defined in Rule 12100(r); and
- A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c).

(c) Eligibility for Chairperson Roster

In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by NASD or have substantially equivalent training or experience and:

- Have a law degree and are 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.

12401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To \$50,000

If the amount of a claim is more than \$25,000 but not more than \$50,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless any party requests a panel of three arbitrators.

(c) Claims of More Than \$50,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$50,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

12402. Composition of Arbitration Panels

(a) If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster, unless the parties agree in writing otherwise.

(b) If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators, one of whom will be selected from the chairperson roster, unless the parties agree in writing otherwise.

12403. Generating and Sending Lists to the Parties

(a) Generating Lists

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of seven public arbitrators from the NASD's chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of seven arbitrators from the NASD's non-public arbitrator roster;
- A list of seven arbitrators from the NASD's public arbitrator roster; and
- A list of seven public arbitrators from the NASD's chairperson roster.

(3) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(b) Sending Lists to Parties

(1) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past ten years and other background information for each arbitrator listed.

(2) If a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time. When a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists under Rule 12404(c).

12404. Striking and Ranking Arbitrators

(a) Each separately represented party may strike up to five of the arbitrators from each list for any reason by crossing through the names of the arbitrators. Two names must remain on each list.

(b) Each separately represented party shall rank all remaining arbitrators on the lists in order of preference, with a "1" indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each list of arbitrators must be ranked separately.

(c) The ranked lists must be returned to the Director no more than 20 days after the date upon which the Director sent the lists to the parties. If the Director does not receive a party's ranked lists within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.

12405. Combining Lists

For each arbitrator classification (public, non-public, and chairperson), the Director will prepare combined ranked lists of arbitrators based on the parties' numerical rankings, as follows:

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.
- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.
- The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

(a) If the panel consists of one arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined chairperson list.

(b) If the panel consists of three arbitrators, the Director will appoint:

- The highest-ranked available non-public arbitrator from the combined non-public arbitrator list;
- The highest-ranked available public arbitrator from the combined public arbitrator list, and
- The highest-ranked available public arbitrator from the combined chairperson list, who will serve as chairperson of the panel.

(c) If the number of arbitrators available to serve from the combined list(s) is not sufficient to fill an initial panel, the Director will appoint one or more arbitrators of the required classification to complete the panel from names generated randomly by the Neutral List Selection System. If the Director must appoint a non-public arbitrator, the Director may not appoint a non-public arbitrator as defined in Rule 12100(n)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 12403 and the parties will have the right to challenge the arbitrators as provided in Rule 12410.

(d) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute NASD's arbitrator oath or affirmation.

12407. Additional Parties

(a) If a party is added to an arbitration after the Director sends the lists generated by the Neutral List Selection System to the parties, but before parties must return the ranked lists to the Director, the Director will send the lists to the newly added party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike the arbitrators in accordance with Rule 12404. If the newly added party returns the lists within 20 days after the date upon which the Director sent the lists to the party, the Director will include the new party's lists when combining rankings under Rule 12405. If the Director does not receive the list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preference among the listed arbitrators.

(b) Once the ranked lists are due to the Director under Rule 12404, no party may amend a pleading to add a new party to the arbitration until a panel is appointed and grants a motion to add the party. Motions to add a party must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with Rule 12503 without waiving any rights or objections under the Code. If the panel grants the motion to add the party, the newly added party may not strike and

rank the arbitrators, but may challenge an arbitrator for cause in accordance with Rule 12410.

12408. Disclosures Required of Arbitrators

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each potential arbitrator must make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, including:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, that are likely to affect impartiality or might reasonably create an appearance of partiality or bias;

(3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates; and

(4) Any existing or past service as a mediator.

(b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(c) The Director will inform the parties to the arbitration of any information disclosed to the Director under this Rule unless the arbitrator who disclosed the information declines appointment or voluntarily withdraws from the panel as soon as the arbitrator learns of any interest, relationship or circumstance that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.

12409. Arbitrator Recusal

Any party may ask an arbitrator to recuse himself or herself from the panel for good cause. Requests for arbitrator recusal are decided by the arbitrator who is the subject of the request.

12410. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

Before the first hearing session begins, the Director may remove an arbitrator for conflict of interest or bias, either upon request of a party or on the Director's own initiative.

(1) The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. Close questions regarding challenges to an arbitrator by a customer under this Rule will be resolved in favor of the customer.

(2) The Director must first notify the parties before removing an arbitrator on the Director's own initiative. The Director may not remove the arbitrator if the parties agree in writing to retain the arbitrator within five days of receiving notice of the Director's intent to remove the arbitrator.

(b) After First Hearing Session Begins

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 12408 that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of NASD Dispute Resolution may exercise the Director's authority under this paragraph (b).

12411. Replacement of Arbitrators

(a) If an arbitrator is removed, or becomes otherwise unable or unwilling to serve, the Director will appoint a replacement arbitrator in accordance with this Rule, unless the parties agree in writing to proceed with only the remaining arbitrators.

(b) The Director will appoint as a replacement arbitrator the arbitrator who is the most highly ranked available arbitrator of the required classification remaining on the combined list.

(c) If there are no available arbitrators of the required classification on the consolidated list, the Director will appoint an arbitrator of the required classification to complete the panel from names generated by the Neutral List Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 12403, and the parties shall have the right to object to the arbitrator as provided in Rule 12410.

(d) If the Director must appoint a non-public arbitrator under paragraph (c), the Director may not appoint a non-public arbitrator as defined in Rule 12100(n)(2) or (3), unless the parties agree otherwise.

12412. Director's Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of the Code to facilitate the appointment of arbitrators and the resolution of arbitrations.

12413. Jurisdiction of Panel and Authority to Interpret the Code

The panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties.

12414. Determinations of Arbitration Panel

All rulings and determinations of the panel must be made by a majority of the arbitrators, unless the parties agree, or the Code or applicable law provides, otherwise.

PART V PREHEARING PROCEDURES AND DISCOVERY

12500. Initial Prehearing Conference

(a) After the panel is appointed, the Director will schedule an Initial Prehearing Conference before the panel, except as provided in paragraph (c) of this Rule.

(b) The Initial Prehearing Conference will generally be held by telephone. Unless the parties agree otherwise, the Director must notify each party of the time and place of the Initial Prehearing Conference at least 20 days before it takes place.

(c) At the Initial Prehearing Conference, the panel will set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters. The parties may agree to forgo the Initial Prehearing Conference only if they jointly provide the Director with the following information, in writing, with additional copies for each arbitrator, before the Initial Prehearing Conference is scheduled to be held:

- A statement that the parties accept the panel;
- Whether any other prehearing conferences will be held, and if so, for each prehearing conference, a minimum of four mutually agreeable dates and times, and whether the chairperson or the full panel will preside;
- A minimum of four sets of mutually agreeable hearing dates;
- A discovery schedule;
- A list of all anticipated motions, with filing and response due dates; and
- A determination regarding whether briefs will be submitted, and, if so, the due date for the briefs and any reply briefs.

12501. Other Prehearing Conferences

(a) At a party's request, or at the discretion of the panel, the panel may schedule one or more additional prehearing conferences regarding any outstanding preliminary matters, including:

- Discovery disputes;
- Motions;
- Witness lists and subpoenas;
- Stipulations of fact;
- Unresolved scheduling issues;

- Contested issues on which the parties will submit briefs; and
- Any other matter that will simplify or expedite the arbitration.

(b) The panel will determine the time and place of any additional prehearing conferences. Prehearing conferences will generally be held by telephone. Unless the full panel is required under Rule 12503, prehearing conferences may be held before a single arbitrator, generally the chairperson.

12502. Recording Prehearing Conferences

(a) Except as provided in Rule 12504, prehearing conferences will not be tape-recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party.

(b) If a prehearing conference is tape-recorded, the Director will provide a copy of the tape to any party upon request for a nominal fee.

12503. Motions

(a) Motions

(1) A party may make motions in writing, or orally during any hearing session. Before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. Every motion, whether written or oral, must include a description of the efforts made by the moving party to resolve the matter before making the motion.

(2) Written motions are not required to be in any particular form, and may take the form of a letter, legal motion, or any other form that the panel decides is acceptable. Written motions must be served directly on each other party, at the same time and in the same manner. Written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

(3) Except as provided by Rule 12504, written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise.

(4) Motions to amend a pleading after panel appointment pursuant to Rule 12309(b) must be accompanied by copies of the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. If a party moves to amend a pleading to add a party, the motion must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with paragraph Rule 12309(c) without waiving any rights or objections under the Code.

(b) Responding to Motions

Except as provided by Rule 12504, parties have 10 days from the receipt of a written motion to respond to the motion, unless the moving party agrees to an extension of time, or the Director or the panel decides otherwise. Responses to written motions must be served directly on each other party, at the same time and in the same manner. Responses to written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

(c) Authority to Decide Motions

(1) The Director decides motions relating to use of the forum under Rule 12203 and removal of an arbitrator under Rule 12410.

(2) Motions relating to combining or separating claims or arbitrations, or changing the hearing location, are decided by the Director before a panel is appointed, and by the panel after the panel is appointed.

(3) Discovery-related motions are decided by one arbitrator, generally the chairperson. The arbitrator may refer such motions to the full panel either at his or her own initiative, or at the request of a party. The arbitrator must refer motions relating to privilege to the full panel at the request of a party.

(4) Motions for arbitrator recusal under Rule 12409 are decided by the arbitrator who is the subject of the request.

(5) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 12206, or to decide a claim or arbitration before a hearing under Rule 12504, unless the Code provides or the parties agree otherwise.

12504. Motions to Decide Claims Before a Hearing on the Merits

(a) Except as provided in Rule 12206, motions to decide a claim before a hearing are discouraged and may only be granted in extraordinary circumstances.

(b) Motions under this rule must be made in writing. Unless the parties agree or the panel determines otherwise, motions under this rule must be served at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion.

(c) Motions under this rule will be decided by the full panel. The panel may not grant a motion under this rule unless a prehearing conference on the motion is held, or waived by the parties. Prehearing conferences to consider motions under this rule will be tape-recorded.

(d) The panel may issue sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.

12505. Cooperation of Parties in Discovery

The parties must cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration.

12506. Document Production Lists

(a) Applicability of Document Production Lists

When the Director serves the statement of claim, the Director will provide the NASD Discovery Guide and Document Production Lists to the parties. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person. Other Document Production Lists may also apply, depending on the specific cause(s) of action alleged.

(b) Time for Responding to Document Production Lists

Unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either:

- Produce to all other parties all documents in their possession or control that are described in the Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged;
- Identify and explain the reason that specific documents described in Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged, cannot be produced within the required time, and state when the documents will be produced; or
- Object as provided in Rule 12508.

(c) Redacted Information

For purposes of this rule and Rule 12507, if a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled "redacted."

12507. Other Discovery Requests

(a) Making Other Discovery Requests

Parties may also request additional documents or information from any party by serving a written request directly on the party. Such requests may be served:

- On the claimant, or any respondent named in the initial statement of claim, 45 days or more after the Director serves the statement of claim; and
- On any party subsequently added to the arbitration, 45 days or more after the statement of claim is served on that party.

At the same time, the party must serve copies of the request on all other parties. Any request for documents or information not described in applicable Document Production Lists should be specific and relate to the matter in controversy.

(b) Responding to Other Discovery Requests

Unless the parties agree otherwise, within 60 days from the date a discovery request other than the Document Production Lists is received, the party receiving the request must either:

- Produce the requested documents or information to all other parties;
- Identify and explain the reason that specific requested documents or information cannot be produced within the required time, and state when the documents will be produced; or
- Object as provided in Rule 12508.

12508. Objecting to Discovery; Waiver of Objection

(a) If a party objects to producing any document described in Document Production Lists 1 or 2, any other applicable Document Production List, or any document or information requested under Rule 12507, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties at the same time and in the same manner. Objections should not be filed with the Director. Parties must produce all applicable listed documents, or other requested documents or information not specified in the objection.

(b) Any objection not made within the required time is waived unless the panel determines that the party had substantial justification for failing to make the objection within the required time.

12509. Motions to Compel Discovery

(a) A party may make a motion asking the panel to order another party to produce documents or information if another party has:

- Failed to comply with Rule 12506 or 12507; or
- Objected to the production of documents or information under Rule 12508.

(b) Motions to compel discovery must be made, and will be decided, in accordance with Rule 12503. Such motions must include the disputed document request or list, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.

12510. Depositions

Depositions are strongly discouraged in arbitration. Upon motion of a party, the panel may permit depositions, but only under very limited circumstances, including:

- To preserve the testimony of ill or dying witnesses;
- To accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing;
- To expedite large or complex cases; and
- If the panel determines that extraordinary circumstances exist.

12511. Discovery Sanctions

(a) Failure to cooperate in the exchange of documents and information as required under the Code may result in sanctions. The panel may issue sanctions against any party in accordance with Rule 12212(a) for:

- Failing to comply with the discovery provisions of the Code, unless the panel determines that there is substantial justification for the failure to comply; or
- Frivolously objecting to the production of requested documents or information.

(b) The panel may dismiss a claim, defense or proceeding with prejudice in accordance with Rule 12212(c) for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.

12512. Subpoenas

(a) To the extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. Subpoenas for documents or the appearance of witnesses may be issued as provided by law.

(b) If a subpoena is issued, the issuing party must send copies of the subpoena to all other parties at the same time and in the same manner in which the subpoena was issued.

12513. Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas

(a) Upon motion of a party, the panel may order the following without the use of subpoenas:

- The appearance of any employee or associated person of a member of NASD; or
- The production of any documents in the possession or control of such persons or members.

(b) Unless the panel directs otherwise, the party requesting the appearance of witnesses by, or the production of documents from, non-parties under this rule shall pay the reasonable costs of the appearance and/or production.

12514. Exchange of Documents and Witness Lists Before Hearing

(a) Documents and Other Materials

At least 20 days before the first scheduled hearing date, all parties must provide all other parties with copies of all documents and other materials in their possession or control that they intend to use at the hearing that have not already been produced. The parties should not file the documents with the Director or the arbitrators before the hearing.

(b) Witness Lists

At least 20 days before the first scheduled hearing date, all parties must provide each other party with the names and business affiliations of all witnesses they intend to present at the hearing. At the same time, each party must file their witness lists with the Director, with enough copies for each arbitrator.

(c) Exclusion of Documents or Witnesses

Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with this rule at the hearing, unless the panel determines that good cause exists for the failure to produce the document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing.

PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD

12600. Required Hearings

(a) Hearings will be held, unless:

- The arbitration is administered under Rule 12800 or Rule 12801;
- The parties agree otherwise in writing; or
- The arbitration has been settled, withdrawn or dismissed.

(b) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner.

(c) The Director will notify the parties of the time and place at least 10 days before the hearing begins, unless the parties agree to a shorter time.

12601. Postponement of Hearings

(a) When a Hearing May Be Postponed

A hearing may be postponed only:

- By agreement of the parties;
- By the Director, in extraordinary circumstances;
- By the panel, in its own discretion; or
- By the panel, upon motion of a party. The panel may not grant a motion to postpone a hearing made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists.

(b) Postponement Fees

(1) Except as otherwise provided, a postponement fee will be charged for each postponement agreed to by the parties, or granted upon request of one or more parties. The fee will equal the applicable hearing session fee under Rule 12902. The panel may allocate the fee among the party or parties that agreed to or requested the postponement. The panel may also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement. The panel may waive the fees.

(2) No postponement fee will be charged if a hearing is postponed:

- Because the parties agree to submit the matter to mediation at NASD;
- By the panel in its own discretion; or
- By the Director in extraordinary circumstances.

(c) Dismissal of Arbitration Due to Multiple Postponements

If all parties jointly request, or agree to, more than two postponements, the panel may dismiss the arbitration without prejudice.

12602. Attendance at Hearings

The parties and their representatives are entitled to attend all hearings. The panel will decide who else may attend any or all of the hearings.

12603. Failure to Appear

If a party fails to appear at a hearing after having been notified of the time, date and place of the hearing, the panel may determine that the hearing may go forward, and may render an award as though all parties had been present.

12604. Evidence

(a) The panel will decide what evidence to admit. The panel is not required to follow state or federal rules of evidence.

(b) Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

12605. Witness Oath

All witnesses must testify under oath or affirmation.

12606. Record of Proceedings

(a) Tape Recording

(1) Except as provided in paragraph (b), the Director will make a tape recording of every hearing. The Director will provide a copy of the tape to any party upon request for a nominal fee.

(2) The panel may order the parties to provide a transcription of the tape recording. If the panel orders a transcription, copies of the transcription must be provided to each arbitrator and each party. The panel will determine which party or parties must pay the cost of making the transcription and copies.

(3) The tape recording is the official record of the proceeding, even if it is transcribed.

(b) Stenographic Record

(1) Any party may make a stenographic record of the hearing. Even if a stenographic record is made, the tape recording will be the official record of the proceeding, unless the panel determines otherwise. If the panel determines in advance that the stenographic record will be the official record, the Director will not make a tape recording.

(2) If the stenographic record is the official record of the proceeding, a copy must be provided to the Director, each arbitrator, and each other party. The cost of making and copying the stenographic record will be borne by the party electing to make the stenographic record, unless the panel decides that one or more other parties should bear all or part of the costs.

12607. Order of Presentation of Evidence and Arguments

Generally, the claimant shall present its case, followed by the respondent's defense. The panel has the discretion to vary the order in which the hearing is conducted, provided that each party is given a fair opportunity to present its case.

12608. Closing the Record

(a) The panel will decide when the record is closed. Once the record is closed, no further submissions will be accepted from any party.

(b) In cases in which no hearing is held, the record is presumed to be closed when the Director sends the pleadings to the panel, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the record is presumed to be closed when the last such submission is due.

(c) In cases in which a hearing is held, the panel will generally close the record at the end of the last hearing session, unless the panel requests, or agrees to accept, additional submissions from any party. If so, the panel will inform the parties when the submissions are due and when the record will close.

12609. Reopening the Record

The panel may reopen the record on its own initiative or upon motion of any party at any time before the award is rendered, unless prohibited by applicable law.

PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD

12700. Dismissal of Proceedings Prior to Award

(a) The panel must dismiss an arbitration or a claim at the joint request of the parties to that arbitration or claim. The dismissal will be with or without prejudice, depending on the request of the parties.

(b) The panel may dismiss a claim or an arbitration:

- Upon motion of a party under Rule 12206 or Rule 12504; or
- On its own initiative under Rule 12212(c) or Rule 12601(c).

12701. Settlement

(a) Parties to an arbitration may agree to settle their dispute at any time. Parties who settle must notify the Director. The Director will continue to administer the arbitration, and fees may continue to accrue, until the Director receives written notice of the settlement. The parties do not need to disclose the terms of the settlement agreement to the Director or to NASD Dispute Resolution, but members and associated persons may have reporting obligations under the rules of NASD.

(b) Settling parties will remain responsible for fees incurred under the Code. If parties to a settlement fail to agree on the allocation of any outstanding fees, those fees will be divided equally among the settling parties, except member surcharges and prehearing and hearing process fees required by the Code, which will remain the responsibility of the member party or parties.

12702. Withdrawal of Claims

(a) Before a claim has been answered by a party, the claimant may withdraw the claim against that party with or without prejudice.

(b) After a claim has been answered by a party, the claimant may only withdraw it against that party with prejudice unless the panel decides, or the claimant and that party agree, otherwise.

PART VIII SIMPLIFIED ARBITRATION AND DEFAULT PROCEEDINGS

12800. Simplified Arbitration

(a) Applicability of Rule

This rule applies to arbitrations involving \$25,000 or less, exclusive of interest and expenses. Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

(b) Single Arbitrator

All arbitrations administered under this rule will be decided by a single public arbitrator appointed from the NASD's chairperson roster in accordance with the Neutral List Selection System, unless the parties agree in writing otherwise.

(c) Hearings

(1) No hearing will be held in arbitrations administered under this rule unless the customer requests a hearing.

(2) If no hearing is held, no initial prehearing conference or other prehearing conference will be held, and the arbitrator will render an award based on the pleadings and other materials submitted by the parties. If a hearing is held, the regular provisions of the Code relating to prehearings and hearings, including fee provisions, will apply.

(d) Discovery and Additional Evidence

(1) Document Production Lists, described in Rule 12506, do not apply to arbitrations subject to this rule. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Document Production Lists in a manner consistent with the expedited nature of simplified proceedings.

(2) The parties may request documents and other information from each other. All requests for the production of documents and other information must be served on all other parties, and filed with the Director, within 30 days from the date that the last answer is due. Any response or objection to a discovery request must be served on all other parties and filed with the Director within 10 days of the receipt of the requests. The arbitrator will resolve any discovery disputes.

(e) Increases in Amount in Dispute

If any pleading increases the amount in dispute to more than \$25,000, the arbitration will no longer be administered under this rule, and the regular provisions of the Code will apply. If an arbitrator has been appointed, that arbitrator will remain on the panel. If a three-arbitrator panel is required or requested under Rule 12401, the remaining arbitrators will be appointed by the Director in accordance with Rule 12406(b). If no arbitrator has been appointed, the entire panel will be appointed in accordance with the Neutral List Selection System.

(f) Arbitrator Honoraria

NASD will pay the arbitrator an honorarium of \$125 for each arbitration administered under this rule.

12801. Default Proceedings

(a) Applicability of Rule

A claimant may request default proceedings against any respondent that falls within one of the following categories and fails to file an answer within the time provided by the Code.

- A member whose membership has been terminated, suspended, canceled, or revoked;
- A member that has been expelled from the NASD;
- A member that is otherwise defunct; or
- An associated person whose registration is terminated, revoked, or suspended.

(b) Initiating Default Proceedings

(1) To initiate default proceedings against one or more respondents that fail to file a timely answer, the claimant must notify the Director in writing and must send a copy of the notification to all other parties at the same time and in the same manner as the notification was sent to the Director. If there is more than one claimant, all claimants must agree in writing to proceed under this rule against a defaulting respondent before this rule may be used.

(2) If the Director receives written notice from the claimant and determines that the requirements for proceeding under this rule have been met, the Director will:

- Notify all parties that the claim against the defaulting respondent will proceed under this rule; and
- Appoint a single arbitrator in accordance with the Neutral List Selection System to consider the statement of claim and other documents presented by the claimant.

(c) Hearings

No hearing shall be held. The arbitrator may request additional information from the claimant before rendering an award.

(d) Amendments to Increase Relief Requested

Claimants may not amend a claim to increase the relief requested from the defaulting respondent after the Director has notified the parties that the claim will proceed under this rule.

(e) Awards

(1) The arbitrator may not issue an award based solely on the nonappearance of a party. Claimants must present a sufficient basis to support the making of an award. The arbitrator may not award damages in an amount greater than the damages requested in the statement of claim, and may not award any other relief that was not requested in the statement of claim.

(2) The default award shall have no effect on any non-defaulting party.

(f) Respondent's Answer

If a defaulting respondent files an answer after the Director has notified the parties that the claim against that respondent will proceed under this rule but before an award has been issued, the proceedings against that respondent under this rule will be terminated and the claim against that respondent will proceed under the regular provisions in the Code.

PART IX FEES AND AWARDS**12900. Fees Due When a Claim is Filed****(a) Fees for Claims Filed by Customers, Associated Persons and Other Non-Members**

(1) Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee in the amount indicated in the schedule below. The Director may defer payment of all or part of the filing fee on a showing of financial hardship. If payment of the fee is not deferred, failure to pay the required amount will result in a deficiency under Rule 12307.

Filing Fees for Claims Filed by Customers, Associated Persons, and Other Non-Members

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Filing Fee</u>
\$.01 to \$1,000	\$50
\$1,000.01 to \$2,500	\$75
\$2,500.01 to \$5,000	\$175
\$5,000.01 to \$10,000	\$325
\$10,000.01 to \$25,000	\$425
\$25,000.01 to \$50,000	\$600
\$50,000.01 to \$100,000	\$975
\$100,000.01 to \$500,000	\$1,425
\$500,000.01 to \$1 million	\$1,575
Over \$ 1 million	\$1,800
Non-Monetary/Not Specified	\$1,250

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event the amount of the filing fee may not be less than \$50 or more than \$1,800.

(b) Fees for Claims Filed by Members

(1) Members filing a claim, counterclaim, cross claim, or third party claim must pay a filing fee in the amount indicated in the schedule below. Failure to pay the required amount will result in a deficiency under Rule 12307.

Fees for Claims Filed by Members

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Filing Fee</u>
\$.01 to 1,000	\$225
\$1,000.01 to \$2,500	\$350
\$2,500.01 to \$5,000	\$525
\$5,000.01 to \$10,000	\$750
\$10,000.01 to \$25,000	\$1,050
\$25,000.01 to \$50,000	\$1,450
\$50,000.01 to \$100,000	\$1,750
\$100,000.01 to \$500,000	\$2,125
\$500,000.01 to \$1,000,000	\$2,450
\$1,000,000.01 to \$5,000,000	\$3,200
Over \$5,000,000	\$3,700
Non-Monetary/Not Specified	\$1,500

(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less than the amount specified in the schedule above, but in any event, the filing fee may not be less than \$225 or more than \$3,700.

(c) Partial Refund of Filing Fee

(1) If a claim is settled or withdrawn more than 10 days before the date that the hearing on the merits under Rule 12600 is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902. No refund will be paid if the NASD receives notice that a claim is settled or withdrawn within 10 days of the date that the hearing on the merits under Rule 12600 is scheduled to begin.

**Partial Refund for Settlement or Withdrawal
More Than 10 Days Before Hearing on the Merits**

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Refund</u>
\$.01 to 1,000	\$25
\$1,000.01 to \$2,500	\$50
\$2,500.01 to \$5,000	\$125
\$5,000.01 to \$10,000	\$250
\$10,000.01 to \$25,000	\$300
\$25,000.01 to \$50,000	\$450
\$50,000.01 to \$100,000	\$750
\$100,000.01 to \$500,000	\$1,125
Over \$500,000	\$1,200

Non-monetary/Not specified

\$1,000

(2) If the claim does not request or specify money damages, and the Director determines that the hearing session fee should be a different amount than the amount specified in the schedule in Rule 12902, the amount of the refund will be the amount of the hearing session fee determined by the Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902.

(d) Reimbursement of Filing Fees

In the award, the panel may order a party to reimburse another party for all or part of any filing fee paid.

12901. Member Surcharge

(a) Member Surcharge

(1) A surcharge in the amount indicated in the schedule below will be assessed against each member that:

- Files a claim, counterclaim, cross claim, or third party claim under the Code;
- Is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code; or
- Employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Code.

Member Surcharge

<u>Amount in Dispute</u> (exclusive of interest and expenses)	<u>Surcharge</u>
Up to \$2,500	\$150
\$2,500.01 - \$5,000	\$200
\$5,000.01 - \$10,000	\$325
\$10,000.01 - \$25,000	\$425
\$25,000.01 - \$30,000	\$600
\$30,000.01 - \$50,000	\$875
\$50,000.01 - \$100,000	\$1,100
\$100,000.01 - \$500,000	\$1,700
\$500,000.01 - \$1,000,000	\$2,250
\$1,000,000.01 - \$5,000,000	\$2,800
\$5,000,000.01 - \$10,000,000	\$3,350
Over \$10,000,000	\$3,750
Non-Monetary/Not Specified	\$1,500

(2) If the claim does not request or specify money damages, the Director may determine that the member surcharge should be more or less than the amount specified in the schedule above, but in any event the amount of the member surcharge may not be less than \$150 or more than \$3,750.

(3) If the claim is filed by the member, the surcharge is due when the claim is filed. If the claim is filed against the member, or against an associated person employed by the member at the time of the events giving rise to the dispute, the surcharge is due when the claim is served in accordance with Rule 12300.

(4) No member shall be assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.

(b) Refund of Member Surcharge

(1) The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the panel:

- Denies all of a customer's claims against the member or associated person; and
- Allocates all fees assessed pursuant to Rule 12902(a) against the customer.

(2) The Director may also refund or waive the member surcharge in extraordinary circumstances.

12902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

(1) Hearing session fees will be charged for each hearing session. The total amount chargeable to the parties for each hearing session is based on the amount in dispute, as specified in the schedule below. In the award, the panel will determine the amount of each hearing session fee that each party must pay.

Hearing Session Fees

Amount of Claim	Hearing Session W/ One Arbitrator	Hearing Session W/ Three Arbitrators
Up to \$2,500	\$ 50	N/A
\$2,500.01 to \$5,000	\$ 125	N/A
\$5,000.01 to \$10,000	\$ 250	N/A
\$10,000.01 to \$25,000	\$ 450	N/A
\$25,000.01 to \$50,000	\$ 450	\$600
\$50,000.01 to \$100,000	\$ 450	\$ 750
\$100,000.01 to \$500,000	\$ 450	\$1,125
Over \$500,000	\$ 450	\$1,200
Unspecified Damages	N/A	\$1,000

(2) If the claim does not request or specify money damages, the Director may determine that the hearing session fee should be more or less than the amount specified in the schedule above, but in any event the hearing session fee shall not be less than \$50 or more than \$1,200 for each hearing session.

(3) If there is more than one claim in a proceeding, the amount of hearing session fees will be based on the largest claim in the proceeding. If any claims are joined or combined under Rules 12312, 12313, or 12314, the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph.

(4) If hearing session fees are allocated against a customer in connection with a claim filed by a member or associated person, the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person. No hearing session fees may be assessed against a customer in connection with a claim filed by a member that is dismissed.

(b) Payment of Hearing Session Fees

(1) The panel may assess the hearing session fees in the award, or may require the parties to pay hearing session fees during the course of the arbitration. The total amount that the panel may require the parties to pay for each hearing session during the course of an arbitration may not exceed the total amount chargeable to the parties for each hearing session under the schedule to paragraph (a) of this rule.

(2) Any interim hearing session fee payments made by a party under this rule will be deducted from the total amount of hearing session fees assessed against that party in the award. If the amount of interim payments is more than the amount assessed against the party in the award, the balance will be refunded to that party.

(c) Assessment of Other Costs and Expenses in Award

In its award, the panel must also determine the amount of any costs and expenses incurred by the parties under the Code or that are within the scope of the agreement of the parties, and which party or parties will pay those costs and expenses.

(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal

If a claim is settled or withdrawn:

- The parties will be subject to an assessment of hearing session fees for hearing sessions already held.
- If NASD receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under Rule 12600 is scheduled to begin, parties that paid a filing fee under Rule 12900 will not be entitled to any refund of the filing fee.
- The parties will also be responsible for any fee or costs incurred under Rules 12502, 12513, 12601, or 12606 in connection with such hearings. If a case is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by Rule 12701(b).

12903. Process Fees Paid by Members

(a) Each member that is a party to an arbitration in which more than \$25,000, exclusive of interest and expenses, is in dispute must pay:

- A non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 12403(b); and
- A non-refundable hearing process fee, due when the parties are notified of the date and location of the hearing on the merits under Rule 12600, as set forth in the schedule below.

Hearing Process Fee Schedule

<u>Amount of Claim</u> (exclusive of interest and expenses)	<u>Hearing Process Fee</u>
\$1 - \$25,000	\$ 0
\$25,000.01 - \$50,000	\$1,000
\$50,000.01 - \$100,000	\$1,700
\$100,000.01 - \$500,000	\$2,750
\$500,000.01 - \$1,000,000	\$4,000
\$1,000,000.01 - \$5,000,000	\$5,000
More than \$5,000,000	\$5,500
Non-Monetary/Not Specified	\$2,200

(b) If an associated person of a member is a party, the member that employed the associated person at the time the dispute arose will be charged the process fees, even if the member is not a party. No member shall be assessed more than one prehearing and one hearing process fee in any arbitration.

(c) The panel may not reallocate to any other party any prehearing and hearing process fees paid by a member.

12904. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or as required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal.

(c) The Director will serve a copy of the award on each party or the representative of the party. The Director will serve the award by using any method available and convenient to the parties and the Director, and that is reasonably expected to cause the award to be delivered to all parties, or their representative, on the same day. Methods the Director may use include, but are not limited to, first class, registered or certified mail, hand delivery, and facsimile or other electronic transmission.

(d) The panel shall endeavor to render an award within 30 business days from the date the record is closed.

(e) The award shall contain the following:

- The names of the parties;
- The name of the parties' representatives, if any;

- An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties;
- A summary of the issues, including the type(s) of any security or product, in controversy;
- The damages and other relief requested;
- The damages and other relief awarded;
- A statement of any other issues resolved;
- The allocation of forum fees and any other fees allocable by the panel;
- The names of the arbitrators;
- The dates the claim was filed and the award rendered;
- The number and dates of hearing sessions;
- The location of the hearings; and
- The signatures of the arbitrators.

(f) The award may contain a rationale underlying the award.

(g) All awards shall be made publicly available.

(h) Fees and assessments imposed by the arbitrators under the Code shall be paid immediately upon the receipt of the award by the parties. Payment of such fees shall not be deemed ratification of the award by the parties.

(i) All monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award:

- If not paid within 30 days of receipt;
- If the award is the subject of a motion to vacate which is denied; or
- As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).