

# The Neutral Corner

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## *NASD Task Force Recommendations*

In January 1996, the National Association of Securities Dealers, Inc. (NASD®) Arbitration Policy Task Force (Task Force) released its report on Securities Arbitration Reform, containing numerous recommendations to improve the arbitration process. This article capsulizes the present status of the recommendations relating to punitive damages in customer cases; claim eligibility; list selection of arbitrators in customer cases; and injunctions.

In addition, the article notes the current status of other proposed rule changes relating to the arbitration of municipal securities, government securities, and statutory discrimination claims.

### *Punitive Damages*

On November 26, 1997, the Securities and Exchange Commission (SEC) published for comment the NASD Regulation, Inc., rule filing relating to punitive damages in **public customer** cases. The comment period concluded in December 1997 and NASD Regulation staff is in the process of reviewing the comments received. (See the September 1997 and April 1997 editions of *The Neutral Corner* for more information on proposed NASD Rule 10336.)

### *Eligibility*

On January 6, 1998, the SEC published for comment the NASD Regulation rule filing proposing amendments to NASD Rules 10304, 10307, and 10324 that we believe will provide a fair, final, and efficient procedure for determining challenges to the eligibility of **any** arbitration claim. The comment period ended on January 27, 1998, and NASD Regulation staff is in the process of reviewing the comments received. (See the September 1997 and April 1997 editions of *The Neutral Corner* for more on this rule filing.)

NASD Regulation and the SEC have agreed that any rule changes relating to punitive damages and claim eligibility will become effective only when the SEC approves a yet-to-be-filed NASD Regulation rule that will amend NASD Conduct Rule 3110(f). NASD Rule 3110(f) relates to the required contents of NASD member firm agreements to arbitrate future disputes that are signed by investors. In 1998, NASD Regulation will propose enhanced disclosures designed to improve investor understanding of the consequences of entering into predispute arbitration agreements.

*continued on page 4*

## Message From The Editor

The NASD has a new, company-wide corporate identity that includes for the first time a shared image, color, and typeface in the logos for the NASD and its subsidiaries—NASD Regulation, Inc. and The Nasdaq Stock Market, Inc. The new logo—featuring a globe enveloped by an electronic circuit board—is displayed throughout this newsletter.

The globe symbol reflects the worldwide outreach of the NASD. The symbol also reinforces the company tag line, "Shaping the new world of investing." This tag line was first used in both Nasdaq®

advertising and collateral materials at the end of 1997. The line will now be widely used for all NASD companies.



Editor's Note: In future issues of *The Neutral Corner*, your letters to the editor will be featured here. We welcome and encourage your comments on the material presented in this publication. NASD Regulation reserves the right to publish or not publish the letters received.

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## Mediation Continues Dynamic Growth

In 1997, more than 850 NASD Regulation cases closed through mediation, more than twice as many as in the previous year. Mediation influenced nearly 15 percent of all cases closed in 1997. Since the beginning of the mediation program in 1995, more than 1,300 cases have closed, with a steady 80 percent settlement rate.

Additional staffing resources in the NASD Regulation Midwest and Florida Regions helped increase mediation activity in those parts of the country. Each month, parties and counsel are becoming more comfortable with the mediation process. In 1998, we expect parties to use mediation to resolve one of every five cases on our docket.

*29 Months Ending 12/31/97  
NASD Regulation Mediation*

Region	Cases Closed	Settlements	%
San Francisco	433	350	81%
New York	401	347	87%
Chicago	274	203	74%
Fort Lauderdale	228	174	76%
Total	1336	1074	80%

### Settlement Weeks

Settlement Week events successfully concluded in Fort Lauderdale, New York City, Houston,

Los Angeles, and San Francisco. Settlement Weeks encourage quick resolutions and facilitate exploration of mediation benefits. The combined results produced 90 concluded cases with 70 settlements. The parties in more than 20 additional cases continue to negotiate. Mediation interest generated during Settlement Weeks resulted in increased activity nationally throughout the last four months of 1997.

### Preliminary Schedule For Settlement Weeks In 1998:

Washington, DC and Baltimore	May
Phoenix	May
Tampa	September
Seattle or San Diego	September

### Training

NASD Regulation sponsored Introductory Mediator Skills training January 26-28, 1998, in Fort Lauderdale. During 1998, NASD Regulation plans to sponsor advanced mediator training in addition to the introductory courses. Our training efforts in 1998 also will focus on advocacy programs. We will sponsor educational forums aimed at building the skills of attorneys representing clients in the mediation process. New York City, Seattle, and Los Angeles are among the potential sites for advocacy programs.

## Dispute Resolution Skills Training Audiotapes Now Available

Audiotapes from the November 1997 NASD Regulation Dispute Resolution Skills Training Program are now available. Topics discussed included the discovery process, mediation, injunctive relief, and employment law, among others. The complete set of tapes costs \$113.40, and \$19.00 per individual session (two tapes included

for each session). For more information or to obtain a full order form, contact AVER Associates, 6974 Ducketts Lane, Elkridge, Maryland 21075, (410) 796-8940, (410) 796-8962 (fax), or visit the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)) under the "Conferences and Events" area.

## NASD Task Force Recommendations From page 1

### List Selection

NASD Regulation will be filing with the SEC proposed amendments to NASD Rule 10308 that will contain a list selection process of appointing arbitrators in **public customer** cases. We are in the process of developing technology that will provide for the automatic and expeditious production of arbitrator lists and arbitrator disclosure reports for the parties. We expect implementation of the arbitrator list selection rule during the third quarter of this year. (See the December 1996 edition of *The Neutral Corner* for the highlights of this proposal.)

### Injunctions

Pursuant to the request of NASD Regulation, the SEC granted a six-month **extension** of NASD Rule 10335 - the Injunctions Rule - through July 3, 1998. The Rule was to have expired by its terms on January 3, 1998.

In September 1997, the NASD published *Notice to Members 97-59* that sought comment on the operation of the Rule and how it might be improved for the benefit of its intra-industry users. It included 22 questions based on previously filed comments from users of this particular Rule.

Based upon our experience with the Rule and participant comments received, NASD Regulation continues to believe that NASD Rule 10335 provides important procedures for the expeditious resolution of intra-industry controversies. However, we also believe that this six-month extension will enable us to recommend sound modifications to the Rule after careful review and evaluation of all of the comments. (See the December 1996 and the December 1995 editions of *The Neutral Corner* for more on the operation of this Rule.)

### Arbitration Funding

Member Process Fees—On January 2, 1998, the SEC approved an amendment to NASD Rule 10333.

The amendment adds **new** process fees for members only that are assessed separately for prehearing and for evidentiary hearing activities. The new, non-refundable fees are levied on NASD members once per case where a member or a former or present employee of a member is a party to an arbitration.

The Prehearing Process Fee accrues in three cumulative stages. First, a \$50 fee accrues when a claim is filed. Next, an additional \$150 fee accrues when an answer to a claim is received or due. Finally, a \$400 fee accrues when the parties receive notice of any arbitrator – for a maximum prehearing fee of \$600. The prehearing fee does not depend on the amount of the claim.

The Hearing Process Fee accrues when the parties receive notice of the first evidentiary hearing session. This fee ranges from \$1,000 to \$5,000 and is based on the damages requested.

Other Fees—Although NASD member surcharge increases became effective on July 1, 1997, the NASD Regulation proposals to raise filing and hearing fees in **all** cases await SEC approval. The SEC published for comment these proposals together with a proposal to raise arbitrator honoraria. The comment period concluded in December 1997 and NASD Regulation staff is in the process of reviewing the comments received. (See the September 1997 edition of *The Neutral Corner* for more on arbitration funding.)

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### Municipal Securities

Effective January 1, 1998, the SEC approved an amendment to Municipal Securities Rulemaking Board (MSRB) Rule G-35 that **requires** non-member bank dealers to arbitrate at this forum all claims or disputes involving their municipal securities activities upon the demand of public customers; other non-member and member dealers; and persons associated with such dealers.

The MSRB rule change also provides that the MSRB will not accept municipal securities claim filings after December 31, 1997. However, it will discontinue its arbitration program only when all of its open cases are closed.

### *Government Securities*

On January 26, 1998, NASD Regulation filed with the SEC a proposed change in rule interpretation that would require NASD members that deal exclusively in government securities to arbitrate claims or disputes arising out of those activities upon the demand of public customers; other limited purpose or general securities member firms; and persons associated with members.

### *Statutory Employment Discrimination Claims*

On December 17, 1997, the SEC published a

proposed amendment to NASD Rule 10201 that would modify the present requirement of NASD registered representatives to arbitrate statutory employment discrimination claims solely by virtue of their registration with the NASD. The proposed rule still permits members and employees to enter into private agreements to arbitrate such disputes.

While the SEC considers this proposal, NASD Regulation is evaluating changes to its intra-industry arbitration rules to instill more confidence in the users of the process. In addition, NASD Regulation plans to propose enhanced Form U-4 disclosures\* to improve employee understanding of the process and the consequences of agreeing to arbitrate at this forum.

\* *Uniform Application for Securities Industry Registration or Transfer*

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## *NASD Regulation To Test Arbitrators*

The NASD Regulation National Arbitration and Mediation Committee has recommended that the Office of Dispute Resolution move to formal testing of new arbitrators. NASD Regulation agrees with this recommendation.

When the Office of Dispute Resolution implemented the new Panel Member and Chairperson training in December 1996, the programs included trainee assessments. The assessments constituted the initial step in complying with the NASD Arbitration Policy Task Force recommendation that we continually evaluate the effectiveness of arbitrator training. Since initiating the assessments, approximately 96 percent of 1,394 trainees have assessed the new programs favorably. (See the December 1996 edition of *The Neutral Corner* for more on the programs and the assessments.)

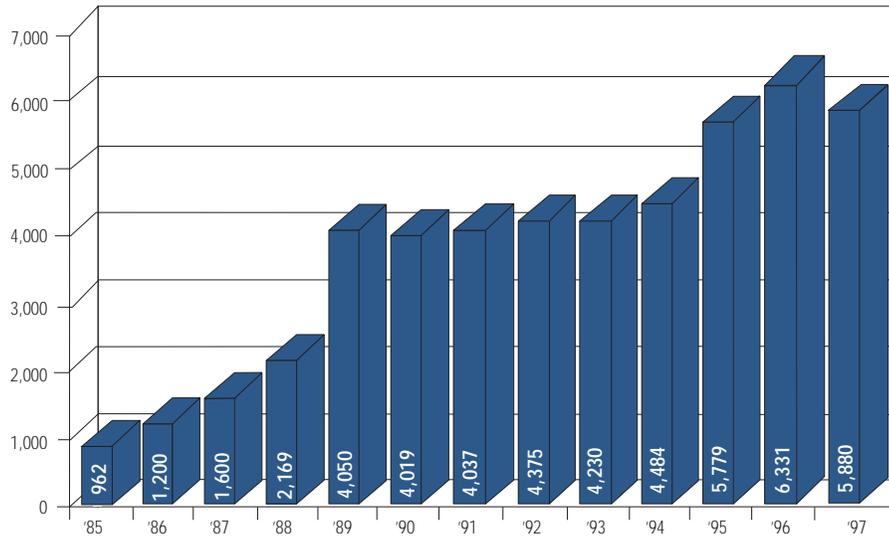
Effective March 2, 1998, we will require that all **new** arbitrators pass a test as a precondition of service.\* The current design of the test is 25 multiple choice questions that will test the basic concepts and materials contained in the *Panel Member Course Preparation Guide* and the on-site program instruction.

For more information on this subject, please contact the Director of Neutral Training and Development, Neal Blacker, at (212) 858-4352.

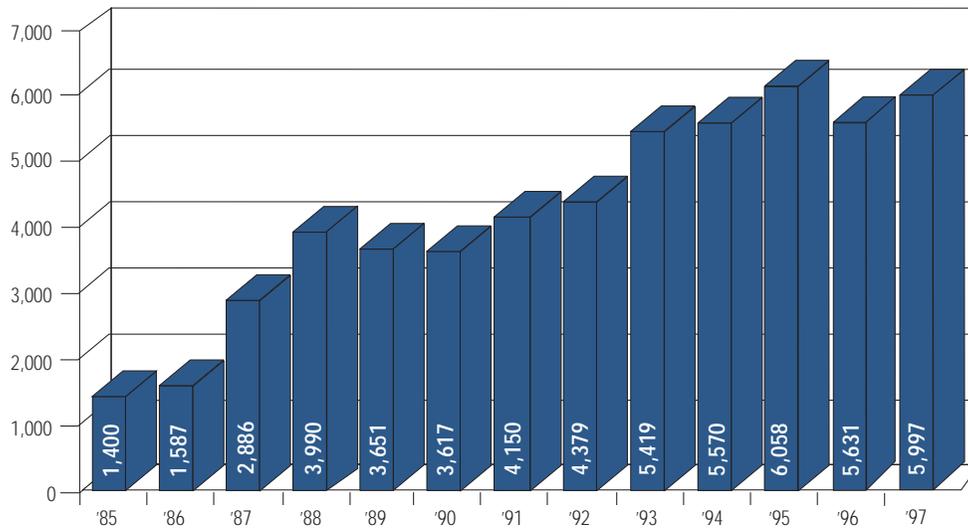
\* *At this time, arbitrators who have met the training requirement or who have been grandfathered before March 2, 1998 will not be required to take the test. The test will be administered at the conclusion of the on-site, face-to-face instruction of the new Panel Member training course.*

## Arbitration Statistics

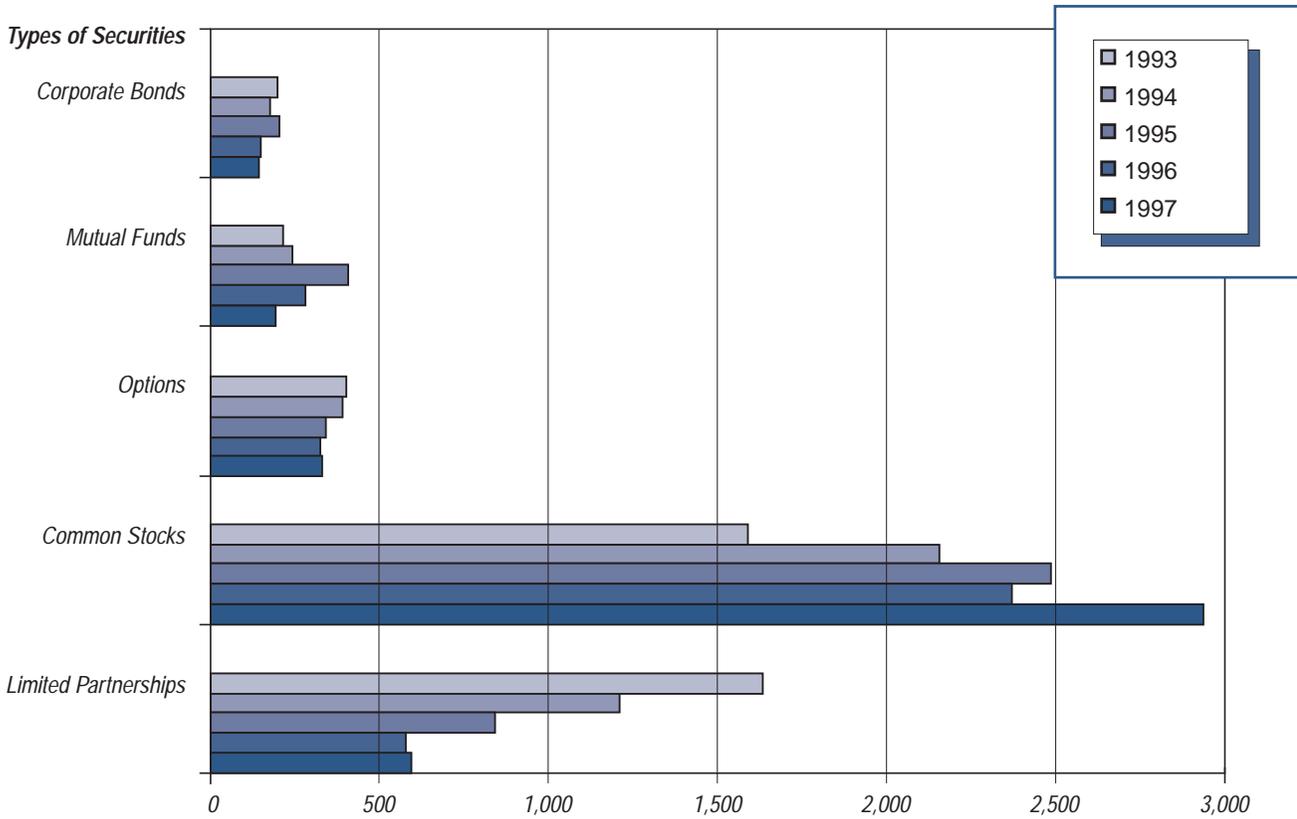
### NASD Regulation Arbitration Cases Closed Annually



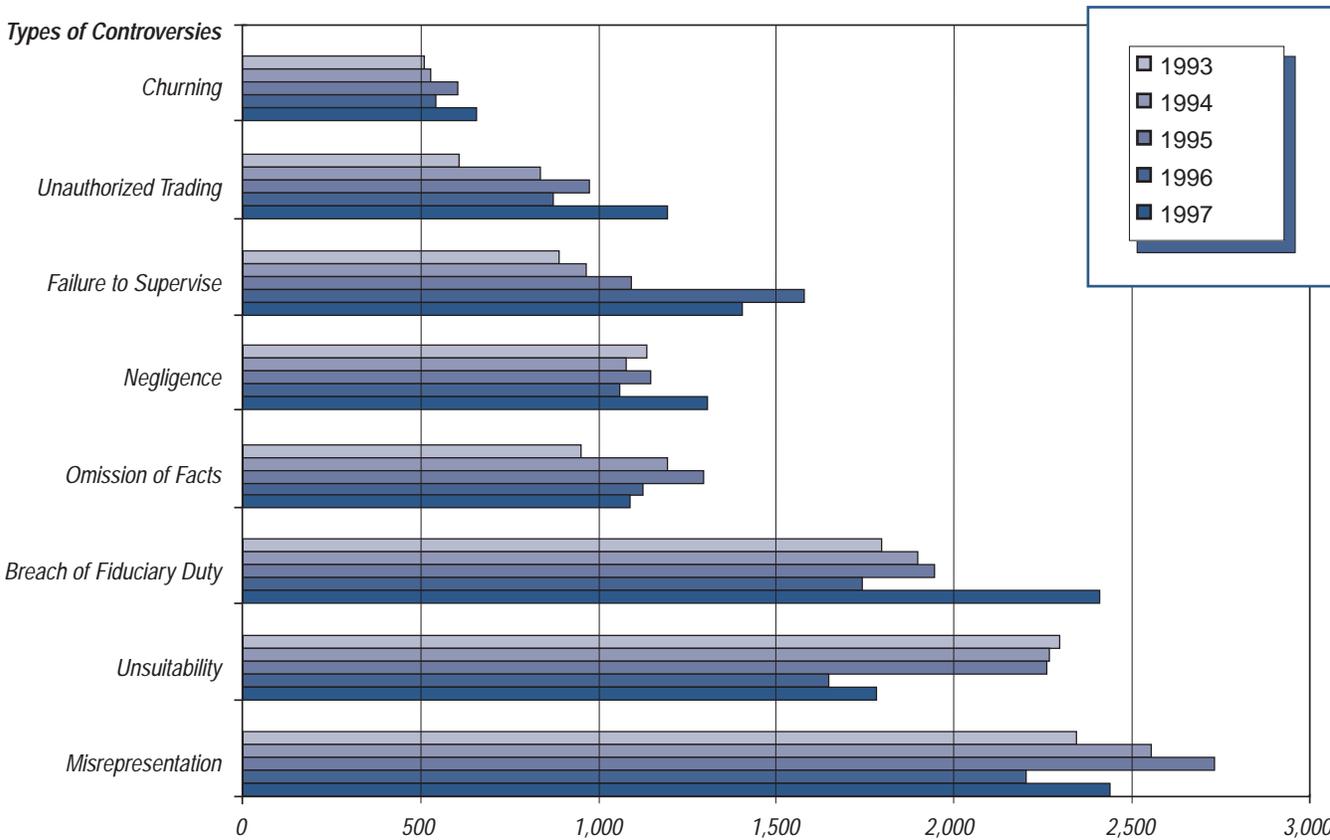
### NASD Regulation Arbitration Cases Filed Annually



# NASD Regulation Arbitration Cases Served—by Security



# NASD Regulation Arbitration Cases Served—by Controversy



## New Party Evaluation Forms

On November 20, 1997, the six NASD Regulation Offices of Dispute Resolution implemented new party evaluations. The initial party and representative response to the new forms has been very favorable both in terms of the number filed and the valuable feedback received.

This early success is due in large part to presiding chairpersons who have distributed the new questionnaires at the conclusion of the last evidentiary hearing and have encouraged the parties or their representatives to participate voluntarily. NASD Regulation has revised the Hearing Procedure Script (Script) to remind the chairperson to make this important request of the parties. (See the April 1997 edition of *The Neutral Corner* on the importance of the Script to the conduct of successful hearings.)

The continued distribution and filing of the new and expansive party forms will allow NASD Regulation to identify arbitrator training needs and to improve program fairness and efficiency. But, we can only achieve ongoing success with the assistance of presiding chairpersons and co-panelists. Before beginning the final hearing on the merits, be sure that you have the new

*Script*, the new party questionnaires; and the postage-paid envelopes addressed to Professor Gary Tidwell of the College of Charleston, Charleston, South Carolina. If you are missing any of the preceding, immediately contact the staff person assigned to your case.

Your commitment to this critical initiative is essential to its long-term success, and the Office of Dispute Resolution thanks you for your participation in this effort.

### Peer Evaluations

In prior editions of *The Neutral Corner* NASD Regulation has encouraged its arbitrators to file arbitrator evaluations and comments, emphasizing that, since staff does not attend most hearings, your feedback, like party feedback, is central to the retention of quality arbitrators. Keep filing the peer evaluations to help ensure program success. (See the April 1997 and December 1995 editions of *The Neutral Corner* on the importance of the evaluation initiative.)



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