

The Neutral Corner

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NASD Dispute Resolution Launches Single Arbitrator Pilot Program

On February 15, 2000, the Securities and Exchange Commission (SEC) approved NASD Rule 10336, entitled "Single Arbitrator Pilot Program," to add to the National Association of Securities Dealers, Inc. (NASD®) Code of Arbitration Procedure. The Single Arbitrator Pilot – which became effective May 15, 2000 – is a two-year, voluntary program that will allow parties with claims between \$50,000.01 and \$200,000 to choose one arbitrator, rather than a three-person panel, to decide a case. The Single Arbitrator Pilot Program Information Booklet is enclosed with this issue of *The Neutral Corner*.

"I am delighted that the Single Arbitrator Pilot will be available to forum users. This Pilot will result in lower arbitration fees and should afford a quicker resolution of arbitration claims. To ensure the creation of the most well-rounded program, we sought feedback from the Public Investors Arbitration Bar Association (PIABA), the Securities Industry Association (SIA), and the Small Firm Advisory Board of the NASD. Their input has helped shape a program that will enhance the dispute resolution process for all parties," said Linda D. Fienberg, President, NASD Dispute Resolution, Inc.

The Single Arbitrator Pilot will improve the efficiency of communication between parties and also lower the cost of the arbitration process. Under the Pilot, parties may send written materials - including discovery requests and motions - directly to the arbitrator as long as all parties and NASD Dispute Resolution are provided materials simultaneously. This is a change from the current Code of Arbitration Procedure, which requires parties to send any materials to arbitrators through NASD Dispute Resolution. In addition, hearing session fees have been reduced in the Pilot Program to reflect the lower arbitrator honoraria.

Parties that participate in the Pilot will receive a list of 15 arbitrators generated by the Neutral List Selection System (NLSS), NASD Dispute Resolution's computer-based arbitrator selection system. Upon narrowing the list to three arbitrators, the parties can decide if they would like a single arbitrator and will then have 15 days to agree on which of the three selected arbitrators will hear the case. Cases involving claims of more than \$50,000 are usually heard by three arbitrators. The dollar threshold for the Pilot includes attorneys' fees, interest, and other costs, but does

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Special Double Edition



NASD®

DISPUTE RESOLUTION

An NASD Company

Message From The Editor

New NASD Subsidiary — NASD Dispute Resolution, Inc.

We are pleased to announce the formation of NASD Dispute Resolution, Inc., a new subsidiary company under the umbrella of the National Association of Securities Dealers, Inc. (NASD®) that will administer the NASD's arbitration, mediation, and other alternative dispute resolution services. The subsidiary, which formerly was known as the NASD Regulation Office of Dispute Resolution, became operational as a newly separate company on July 9th. (See enclosed press release for more details.)

The NASD's dispute resolution entity will continue to be directed by Linda D. Fienberg as President. Ms. Fienberg will also retain her role as Chief Hearing Officer for NASD Regulation, Inc. George H. Friedman will continue his role as Senior Vice President and Director of Dispute Resolution.

New Members Of NASD Dispute Resolution Management Team

In January 2000, Jean Feeney was named Special Advisor to the President, NASD Dispute Resolution, a new position. Ms. Feeney has worked in a number of capacities for many years in the NASD's Office of the General Counsel (OGC), most recently as Assistant General Counsel in NASD Regulation's OGC. Ms. Feeney brings a wealth of knowledge and experience to the position. For the past three years, she has worked almost exclusively on matters for the Office of Dispute Resolution, including rule filings, Code interpretations, interpretive letters, and general legal advice to the public and to our staff. In her new position, she will continue many of these functions and also will work with OGC in managing the rule filing process for NASD Dispute Resolution.

On January 24, 2000, Barbara L. Brady was named Director of Neutral Management, replacing Gary Tidwell, who was promoted to NASD Regulation Vice President and Executive Director of the NASD Institute for Professional Development. Ms. Brady comes to us from the American Arbitration Association (AAA), where she enjoyed a distinguished career for over 21 years. Since 1995, she served as the AAA's

Assistant Vice President for Case Administration, supervising all aspects of case administration, setting administrative policy, overseeing the staff training program, and working closely with their roster of neutrals.

Promotions

In January 2000, Kenneth Andrichik, Director of Mediation and NASD Dispute Resolution Business Strategies, and Dorothy Popp, Director of Operations for NASD Dispute Resolution, were each promoted to the position of Associate Vice President. Mr. Andrichik and Ms. Popp were recognized for their outstanding dedication, knowledge, and experience within NASD Dispute Resolution and NASD Regulation as a whole. Mr. Andrichik has been with the NASD since 1980. Ms. Popp joined NASD Dispute Resolution in 1995.

On January 3, 2000, William Kimme was promoted to Assistant Director of NASD Dispute Resolution Business Strategies. Mr. Kimme served as Senior Attorney in the Midwest Regional Office for several years acquiring significant experience in securities dispute resolution. In addition, he holds a masters degree in International Management and ran an international business consulting firm for three years. With his help, NASD Dispute Resolution expects to expand dispute resolution services internationally and to explore strategies to promote new business opportunities for dispute resolution and neutral training services.

Acknowledgment

The Office of Neutral Management, which oversees the publication of this newsletter, would like to express its sincere appreciation to Judith Hale Norris for acting as the Guest Editor of this special double edition of *The Neutral Corner*. Ms. Norris' diligent efforts and outstanding contribution made the publication of this issue possible. We thank her for her efforts.

NASD Dispute Resolution Launches Single Arbitrator Pilot Program, from page 1

not include filing fees, hearing session fees, member surcharges, and member processing fees. All claims, including counterclaims, third-party claims, and cross-claims, must be contained within the \$200,000 limit. A party seeking punitive damages

may only do so under the Pilot if both parties agree, and if all claims do not exceed \$200,000. The Pilot program is not available to parties who are seeking the resolution of intra-industry or employment disputes.

NASD Mediation Works

When the parties to an NASD arbitration case have decided to use mediation, the next step is to choose a dispute resolution forum and a mediator. Although any forum and any mediator to which all parties can agree is acceptable, there are many advantages to selecting NASD's Mediation Program.

Now in its fifth year, over 3,000 securities and securities employment disputes have settled within a few weeks to a few months of the parties' agreement to mediate. NASD's well-established, highly successful Mediation Program has a staff of 15 full-time employees and boasts the largest roster of securities mediators in any forum, over 850. Approximately 80 percent of cases in the NASD Mediation Program settle.

The Mediators

NASD mediators have been screened for their training and mediation experience in addition to their ability to help parties communicate better, analyze their options, and explore alternatives for resolving their dispute. Many NASD mediators are also NASD arbitrators. These neutrals have the expertise to assist parties in weighing the relative risks of not settling their case.

All NASD mediators should abide by the Model Standards of Conduct for Mediators. They are required to disclose any and all possible conflicts of interest, as well as any relationship that could create an appearance of partiality or bias.

NASD mediators cannot be subpoenaed to testify in an arbitration or any pending litigation.

NASD mediators generally fall into one of three categories based on their style and approach to settling cases.

1. **Evaluative** - At some point in the mediation, the mediator suggests a specific solution to the dispute, after obtaining the parties' permission to do so.
2. **Facilitative** - The mediator will never propose a specific settlement, or will do so only as a last resort and only with the parties' permission.
3. **Combination of Evaluative and Facilitative** - The mediator will use facilitative techniques as long as possible, but if an impasse is reached he/she will use evaluative techniques to move settlement discussions forward.

Some NASD mediators also offer creative settlement techniques, such as high/low mediation, which are designed to break an impasse.

Case Administration

NASD Mediation Administrators emphasize the highest quality customer service for the parties and the mediators. The mediation will not stay or delay any pending NASD arbitration unless the parties agree otherwise. The mediation process is strictly confidential. No formal recordings of mediation sessions or settlement agreements are

maintained at the NASD. Mediation Administrators supervise and administer the case from its initial stages to its conclusion, ensuring a smooth transition from arbitration to mediation, and addressing any individual needs that arise during the life of the mediation case.

Perhaps the most valuable service provided by NASD mediation staff is convening the mediation case. Mediation Administrators regularly contact parties to suggest mediation. Once a party has expressed interest, the Administrator will work to get all parties in agreement to mediate.

Because NASD mediation staff act as neutral case administrators, they are sometimes successful in persuading parties to mediate when a direct suggestion by one of the parties to the other has failed. In this role, the NASD representative can also explore a party's interest in mediation without disclosing the opposing party's position.

Case administration also includes:

- *Providing lists of proposed mediators that are tailored to the subject matter in dispute and the individual parties' needs.* Upon request, the NASD will provide references for mediators.
- *Explaining the mediation process and answering any questions that arise during the course of the mediation.* Materials such as a step-by-step guide on what to expect at the mediation session can be provided.
- *Handling scheduling and other arrangements.* The NASD provides rooms for mediation sessions at NASD Dispute Resolution Regional Offices at no extra charge to the parties. If the parties prefer to meet elsewhere, alternative meeting space can be confirmed, sometimes at discounted rates.

- *Working with all parties to ease the transition from scheduled arbitration hearing(s) to the mediation session.* Arbitrators can only be advised by the parties that a mediation session is scheduled.
- *Providing current disclosures on every proposed mediator.* The disclosures include the mediator's education, employment history, training, conflicts, past and present accounts, and mediation case experience.
- *Reviewing Central Registration Depository (CRDSM) records to ensure that only the mediators of the highest quality are maintained on NASD's roster of mediators.*
- *Ensuring that a Mediation Submission Agreement has been signed by all parties and the mediator.* In the Mediation Submission Agreement, the parties, counsel, experts, witnesses, and mediator agree to abide by the NASD Mediation Program's ground rules, including confidentiality provisions.

Services

Some additional services provided through the NASD Mediation Program are:

- *Enforcing Settlement Agreements.* When a Settlement Agreement is signed by all participating parties in an NASD mediation, and an NASD member firm or associated person fails to pay the agreed-upon amount, the opposing party can request that the NASD initiate non-summary suspension proceedings pursuant to NASD Rule 9510, *et seq.* The NASD will send a warning letter informing the breaching party that it will be suspended from conducting business unless it complies with the terms of the Settlement Agreement within the next 15 business days. The breaching party will be

suspended unless the agreed-upon amount is paid, a new settlement is reached, the breaching party files for bankruptcy protection, or requests an administrative hearing with the Office of Hearing Officers.

- *Arranging telephonic mediations with experienced mediators.*
- *Conducting mediation sessions after hours or on weekends.*
- *Providing the Arbitrator's Disclosure Report listing all past arbitration rulings when the mediator is also an arbitrator.*
- *Filing mediation requests via the Internet (www.nasdadr.com).*

Costs

The mediators set their hourly rates, which begin at \$150 per hour. Fees are usually divided equally among the parties, unless the parties decide otherwise. The NASD now offers mediation at \$50 per hour for cases involving less than \$25,000. In October 2000, the NASD will offer special mediation rates during Settlement Month.

The NASD provides high-quality mediation case administrative services and excellent mediators for the resolution of securities and securities employment issues. The NASD tailors services to fit the individual requirements and responds to the needs of the parties and mediators.

NASD Mediation Adopts New Mediator Fees And Introduces Reduced-Fee Mediations

Effective April 3, 2000, the NASD Mediation Program adopted a new schedule for administrative fees charged to mediators. The new administrative fees range from \$0-\$50 per hour, depending on the mediator's hourly billing rate. The new schedule, which replaces the flat \$25 per hour administrative fee previously charged, is as follows:

Mediator's Hourly Rate	NASD Hourly Fee
Pro Bono	None
Up to \$99.99	\$25
\$100 to \$199.99	\$35
\$200 and over	\$50

The new schedule applies to all cases to which mediators are assigned after April 3, 2000.

Also effective April 3, the NASD Mediation Program introduced a reduced-fee initiative, designed to make mediation cost-effective in low dollar-value cases. For cases involving less than \$25,000, participating NASD mediators have agreed to reduce their rates, normally \$150-\$400 per hour, to \$50 per hour. Over 400 mediators, or about 1/2 of the NASD mediator roster, have already agreed to participate in the reduced-fee Mediation Program.

The NASD has submitted a rule filing with the SEC concerning other proposed amendments to its mediation fee rules. Developments on the rule filing will be discussed in future editions of *The Neutral Corner*.

NASD Mediation Contacts And Session Locations

Associate Vice President: **Ken Andrichik** • Assistant Director: **Elizabeth McCoy**

Northeast Region	Southeast Region	Midwest Region	Western Region
Edward Sihaga (212) 858-4359	Claire Moritt (561) 447-4916	Elizabeth Walsh (312) 899-4424	LeDona Withaar (213) 613-2670
Steve Gary (212) 858-4435	Leon DeLeon (561) 447-4917	Susan Turrise (312) 899-4420	Nelia Virtusio (415) 882-1236
<ul style="list-style-type: none"> • Albany • Baltimore • Boston • Buffalo • New York City • Norfolk • Philadelphia • Pittsburgh • Richmond • Washington, DC 	<ul style="list-style-type: none"> • Atlanta • Boca Raton • Charlotte • Little Rock • Memphis • New Orleans • Raleigh • Tampa 	Elizabeth Accetturo (312) 899-4436 <ul style="list-style-type: none"> • Albuquerque • Chicago • Cincinnati • Cleveland • Columbus • Dallas • Denver • Detroit • Houston • Indianapolis • Kansas City • Louisville • Milwaukee • Minneapolis • Nashville • Oklahoma City • Omaha • Phoenix • St. Louis 	<ul style="list-style-type: none"> • Anchorage • Honolulu • Las Vegas • Los Angeles • Portland • Salt Lake City • San Diego • San Francisco • Seattle

REMINDER

NASD Dispute Resolution will reimburse neutrals for travel expenses, lodging, and meals if they live 120 miles or more from the hearing location, provided approval is received from NASD Dispute Resolution. Approval must be obtained:

- **in writing,**
- **signed by the appropriate Regional Director,**
- **given prior to any expenditures.**

We thank you for your cooperation.

Update On Injunctive Relief

On January 12, 2000, the NASD filed with the SEC a proposed rule change (SR-NASD-00-02) to amend NASD Rules 10335 and 10205 of the Code of Arbitration Procedure to simplify and expedite the procedures for seeking immediate injunctive relief in intra-industry disputes and to fairly and effectively integrate court-ordered initial injunctive relief with the arbitration of the underlying claims in the same disputes. The proposed rule would replace the pilot rule that has been in effect since 1996. On December 28, 1999, the SEC approved the NASD's proposal (SR-NASD-99-72) to extend the effectiveness of the current pilot rule for injunctive relief cases to January 5,

2001, or sooner, pending SEC action on the rule filing to amend the injunctive relief rule and make it a permanent part of the Code.

On April 7, 2000, the SEC published for public comment the proposed changes to NASD Rule 10335. The most significant part of the proposal is that it eliminates the option of seeking temporary injunctive relief in arbitration. Under the amendments, parties would still be able to seek immediate injunctive relief in a court of law. However, parties seeking such relief in court would continue to be required to simultaneously file a Statement of Claim requesting permanent relief in arbitration in regard to the same dispute.

Tools To Conduct An Effective Prehearing Conference

By Judge Sharon T. Nelson¹

Recently, NASD Dispute Resolution revised the current Procedure Script (Script), and created a Scheduling Order (Order) for use by Chairpersons during the Initial Prehearing Conference (IPHC). The Script contains the relevant procedures and guidelines for conducting the IPHC. The Order contains general issues discussed and agreed to by the parties during the IPHC, including the parties' acceptance of the panel and dates of the scheduled evidentiary hearing. Importantly, the Order sets forth a schedule of pre-evidentiary hearing activities and corresponding dates on which the parties have agreed to accomplish each activity.

This article examines the pertinent sections of the Script and Order and offers practical advice to the Chairperson as to how the Script and Order should be used to facilitate the IPHC and ensure complete coverage of the required issues. Although the Script and Order will typically be used only by the Chairperson, we strongly recommend that all arbitrators review the materials in the event they are later chosen to serve as Chairperson in a subsequent arbitration. Copies of the Script and Order are included in this edition of *The Neutral Corner*.

¹ The Editor acknowledges the contributions made by the Honorable Sharon T. Nelson to this article prior to her untimely death. She was an excellent arbitrator, who devoted numerous hours to the NASD Dispute Resolution Program.

I. The IPHC Scheduling Order

As mentioned above, the Order is a relatively new document that the NASD has recently included in the Chairperson Case Package. The Order, upon completion by the Chairperson, confirms the pre-evidentiary hearing activities discussed and agreed to by the parties during the IPHC. Chairpersons are required to complete the Order during or shortly after the IPHC. The Order must be signed, dated, and submitted to the NASD staff within 48 hours after the IPHC. Once received, the staff will forward a copy of the Order, along with a letter confirming the hearing, to the parties and the panel. Because the Order represents the parties' agreement, it can only be altered by the panel or by the parties' stipulation as approved by the panel.

The Order is discussed below in context with the revised IPHC Script.

II. The IPHC Procedure Script

1. Introductions (Part A and Part B)

The Chairperson is first required to obtain the names of the parties, the parties' representatives, and the panel members. The Chairperson should remind the participants to identify themselves when speaking. In the event a different party representative appears at the IPHC than previously advised, the Chairperson should determine whether the representative in attendance will be assuming the role of lead counsel.

2. Panel Member Disclosure (Part C)

Panel member disclosures are an essential part of the arbitration process. They confirm, for the participating parties, that the arbitrators do not have a bias or conflict with a party.

Arbitrators who are selected and who agree to serve will receive the NASD Arbitrator Case Packet prior to the IPHC. The Case Packet contains, among other items, the Arbitrator Disclosure Report (Report), Oath of Arbitrator (Oath), the Temporary and Permanent Arbitrator Disqualification Criteria, and the Arbitrator Disclosure Checklist. Arbitrators must verify that the information contained in their Report is accurate and current, and that they are neither temporarily nor permanently disqualified from serving. When appropriate, any new information should be added to the Arbitrator Checklist and a copy returned to the NASD staff prior to the IPHC. **The Report must be reviewed for each new case to which an arbitrator is assigned.**

Issues concerning an arbitrator's disclosure may arise during the IPHC. For example, an arbitrator may learn, after submitting his/her Arbitrator Disclosure Checklist, that a conflict has arisen as to a party, a party representative, or another arbitrator serving on the panel. It is important that all new disclosures previously added to the Arbitrator Disclosure Checklist or discovered **after** the Report has been reviewed and the Arbitrator Disclosure Checklist submitted be repeated at the IPHC.

3. Confirmation Of The Panel (Part D)

The Chairperson must obtain the parties' acceptance and confirmation of the panel. The IPHC Order contains a corresponding section in which the Chairperson notes that the parties have confirmed and accepted the panel. In the event that a panel member is challenged for cause during the IPHC, the Chairperson should advise the parties that the IPHC can continue with the remaining participants. If the Chairperson is challenged for cause, the Chairperson should advise the parties that the IPHC can continue with the staff member reading from the Script. The staff member is not permitted to make any rulings. If the parties decline to continue or if a staff member is unavailable to continue the IPHC, the Chairperson should schedule a new IPHC date with the parties and the remaining panel members, keeping in mind to schedule the subsequent IPHC far enough in advance for a replacement arbitrator to be appointed.

4. Oath Of Arbitrators (Part E)

It is critical that all arbitrators sign, have notarized (if applicable)², and return their Oath to the NASD, preferably before the IPHC, but no later than when the Chairperson or panel rules on issues in the case. In the past, parties have successfully challenged an award based on an arbitrator's failure to submit a current Oath. **A new Oath must be submitted for each new case to which an arbitrator is assigned.** If the Oath is not returned prior to the IPHC, the Chairperson or the NASD staff member must administer the Oath at the IPHC (a copy of the Oath is contained in the Script).

5. Acknowledgment And Identity Of The Pleadings (Part F)

This is a recital of the pleadings that the panel has received. Pleadings not in the possession of the panel before the IPHC will be sent shortly thereafter by the NASD staff member.

6. Mediation (Part G)

Because it fosters an early and cost-effective resolution of claims, the Mediation Program has become an important part of the NASD Arbitration Program. Currently, 80 percent of the arbitration cases that mediate result in a settlement. The IPHC Script encourages the use of mediation by requesting the parties to voluntarily schedule tentative mediation dates in conjunction with setting the evidentiary hearing dates. If the parties choose a mediation date, the Chairperson should note the date on the IPHC Order. The NASD staff will forward the information to the Mediation Administrator for follow-up with the parties.

² NASD Dispute Resolution has evaluated which states require notarization of the Oath. To date, NASD Dispute Resolution has determined that arbitrators in California, Nevada, Alaska, Washington, Oregon, Utah, and Hawaii are not required to have the Oath notarized.

7. Selection Of Hearing Dates (Part H)

One of the primary goals of the IPHC is to set dates and times for the evidentiary hearing and prehearing activities and conferences dealing with discovery and dispositive motions. (The Chairperson should feel free to schedule discovery and motion cut-off dates before setting the hearing dates.) However, with regard to setting the evidentiary hearing dates, the Chairperson should first ask the parties whether they have stipulated to hearing dates. If not, the Chairperson should determine the number of hearing dates needed and when the first session will occur. As a practical matter, it is best to overestimate the number of hearing dates needed, and to schedule those sessions on consecutive days.

Remember, the parties have prior notice of the issues covered in the IPHC. Therefore, the Chairperson should strongly urge that the hearing dates be placed on the calendar regardless of a party's failure to prepare, prior to the IPHC, for the selection of dates. Although a party may subsequently request a postponement of the hearing dates pursuant to NASD Rule 10319 of the Code of Arbitration Procedure, it is ultimately the panel's decision on whether to grant or deny the motion. A party seeking a postponement must pay the requisite postponement fee at the time of the request.

8. Discovery Cut-Off Dates And Motion Deadlines (Part I And Part J)

This section of the Script has been updated to include the relatively recent adoption by the NASD of the Discovery Guide. (See *NASD Notice to Members 99-90*. See also the November 1999 edition of *The Neutral Corner*.) The Discovery Guide, a copy of which is included in the Arbitrator's Case Packet and the parties' Case Packet, provides details of the types of documentary evidence the parties should voluntarily exchange without staff or arbitrator intervention. The Script reminds the Chairperson that the Discovery Guide applies to public customer cases, and that it is a guide that can be altered by the parties' agreement or supplemented by the Chairperson's ruling.

With that in mind, the Chairperson should have parties select a discovery cut-off date. This is the date by which the parties agree to file their final responses to discovery. If the parties cannot agree to a cut-off date, the Chairperson should establish a discovery deadline for submitting and responding to discovery requests. Typically, responses to discovery, including objections, must be filed 30 calendar days from the date of service of the request. A party wishing to respond to objections to discovery may do so within 10 calendar days after receipt of the objections. The IPHC Order contains a section in which the discovery cut-off dates should be entered.

9. Motions (Part J)

As with scheduling discovery cut-off dates, the Chairperson should instruct the parties to set dates for submitting motions, oppositions to motions, and, if permitted, replies to motions. Discovery motions are ordinarily heard and ruled on by the Chairperson, while other motions (i.e., motions to bar evidence or motions to dismiss) require a ruling from the entire panel. Typically, the panel will not hear arguments on a motion during the IPHC, unless prior to the IPHC the parties and arbitrators have agreed to take up the substantive motions.

Parties may be hesitant to schedule a motion cut-off date. However, in order to avoid delay of the arbitration proceeding, it is necessary to have the parties schedule motion cut-off dates. Likewise, the parties should also schedule prehearing conference dates for oral arguments on the motions. Finally, with regard to the motion schedule, the Chairperson should remind the parties that if they file an unanticipated motion, and time permits before the day of the scheduled hearing, any opposition to a motion must be filed 14 calendar days after service of the motion. If a reply is permitted, it must be filed 7 calendar days after the opposition is served. The IPHC Order contains a corresponding section in which the motion cut-off schedule should be recorded.

10. Other Administrative Matters And Concluding The IPHC (Parts K-N)

At this point in the IPHC, the Chairperson has a chance to resolve any remaining administrative issues. For example, the Chairperson should remind the parties that they must notify the NASD staff within 24 hours of a scheduled prehearing conference if the conference is not needed. Next, the Chairperson should schedule a deadline for submitting briefs on any unique points of law. To allow adequate time to review the briefs, we suggest setting the submission date at least 14 days prior to the first day of the scheduled hearing. Additionally, the Chairperson should remind the parties that unless they agree otherwise, any written or oral ex parte communication between a party and arbitrator is forbidden, and could result in an arbitrator being recused and ultimately, a delay in the proceedings. Finally, the Chairperson should give the parties an opportunity to address other outstanding issues that may arise during the case, such as, a party's request to allow telephonic testimony, the subpoena of a non-party witness, the use of a court stenographer at the hearing, or additional accommodations for security or disability.

11. Conclusion Of The IPHC (Part O)

This is the Chairperson's opportunity to review the IPHC Order with the parties and panel.

12. Executive Session

Following the IPHC, the panel should meet in Executive Session to discuss and decide the issue of additional hearing session deposits. The additional deposits can be assessed pursuant to NASD Rule 10205 or NASD Rule 10332 of the Code if it appears that the arbitration will run longer than previously expected. The panel should also discuss how to assess the cost of the IPHC. Although panels might prefer to wait until the end of the case to decide how to assess the IPHC fees, many panels find it helpful to make a preliminary determination immediately following the IPHC in the event the parties settle prior to hearing. If a hearing does occur, the panel can reassess the fees at the award stage based on its entire experience with the case and parties.

III. Conclusion

The IPHC Script and Order are critical. Primarily, they ensure a fair and efficient resolution of a case. Additionally, the Script and Order help the Chairperson to effectively facilitate the IPHC as well as provide the parties with direction on how the case will proceed. For these reasons, the NASD strongly urges Chairpersons and panelists to review the IPHC Script, the Scheduling Order, the Discovery Guidelines, and any other pertinent document, prior to attending the IPHC.

As always, arbitrators are encouraged to contact NASD staff to discuss their suggested improvements to the IPHC procedures.

Advanced Mediator Skills Training

The Midwest NASD Dispute Resolution Office is hosting a two-day *Advanced Mediator Skills Training Program* in Chicago, Illinois on October 19 and 20, 2000. The cost is \$400 and attendees

must register to reserve a place. Space is limited so act now! For more information, contact Elizabeth Accetturo in our Midwest Regional Office at (312) 899-4440.

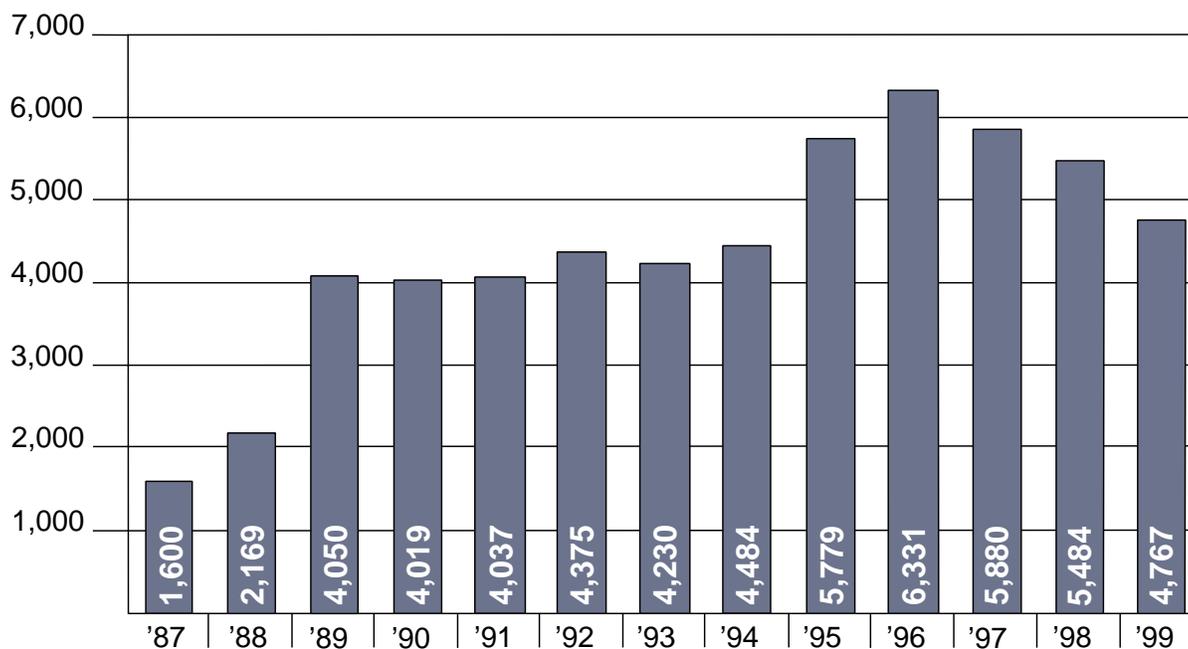
Duty To Disclose

An NASD arbitrator's duty to disclose includes the disclosure of changes in employment, position functions, or professional clients. In the event these changes do not create a conflict with the parties, representatives, witnesses, or subject matter, they may nevertheless affect your "classification" as a "public" or "non-public" (industry) arbitrator under NASD Rule 10308. This is of paramount importance to the parties since they are entitled to a panel of neutral

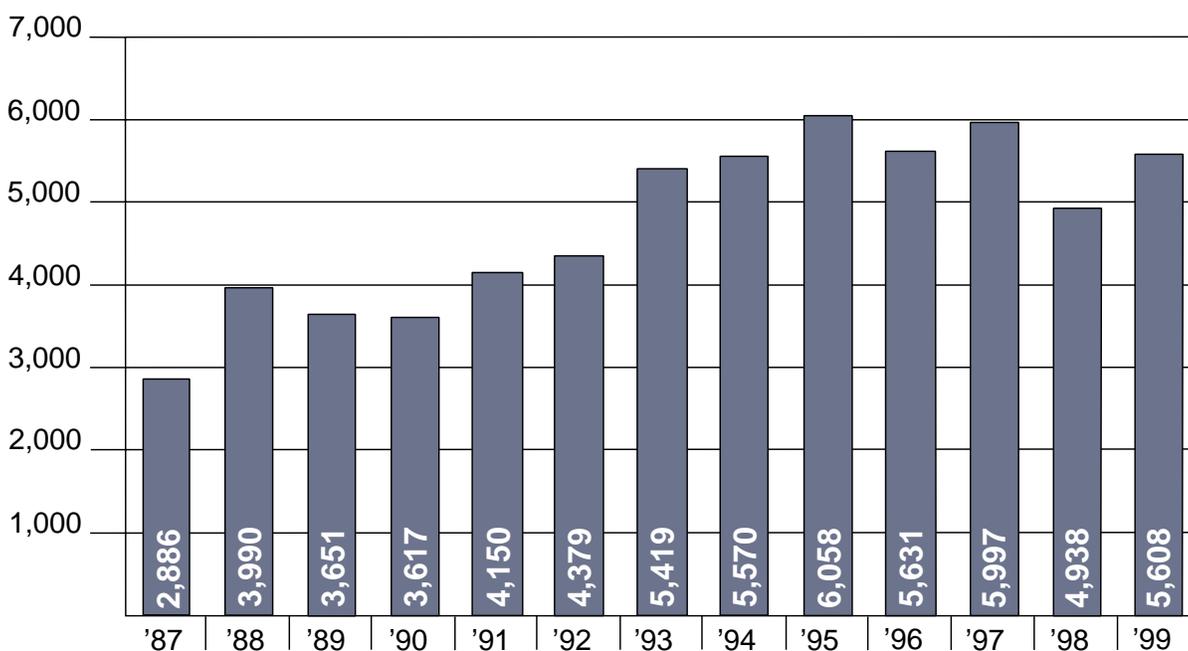
arbitrators who are properly classified under applicable NASD arbitration rules.

In view of the above, always disclose facts or circumstances that might result in a change in your arbitrator classification. To facilitate classification awareness regularly review NASD Rule 10308 (a) Definitions (4) "non-public" arbitrator and (5) "public arbitrator" and call assigned staff with any questions or concerns.

NASD Arbitration Cases Closed Annually



NASD Arbitration Cases Filed Annually



Study Praises NASD Arbitrators

An independent analysis of party evaluations voluntarily submitted by claimants, respondents, or their representatives between December 1, 1997 and April 1, 1999, found that *more than 93 percent* of those participating in the survey believed that the NASD arbitrators who presided over their cases demonstrated *fairness* and the *appearance of fairness*. The analysis was made by two Assistant Professors in the Department of Social Sciences at the United States Military Academy at West Point, New York. "Using tests of statistical significance takes the guesswork out of data analysis. The numbers speak for themselves," said Major Michael L. Hummel, co-author of the study.

The analyzed data also showed that the parties or their representatives *overwhelmingly* believed that the arbitrators who conducted their hearing(s), see below:

The evaluations were distributed to parties or their representatives at the end of the evidentiary hearings. In all, parties evaluated 1,032 arbitrators or approximately 15 percent of all available NASD arbitrators during the 16-month survey.

We congratulate our arbitrators on these very positive results. At the same time, we ask our arbitrators to always be mindful of the indispensable characteristics analyzed in this survey because they relate to arbitrator demeanor, skills, and performance and constitute the expectations of *all* participants who can file evaluations—peers and staff, as well as the parties.

The survey conclusions are contained in a report entitled "Party Evaluation of Arbitrators: An Analysis of Data Collected From NASD Regulation Arbitrations." To obtain a copy of the entire report visit our new Dispute Resolution Web Site at www.nasdadr.com.

<ul style="list-style-type: none">• displayed professionalism• listened attentively• used clear, impartial, or unbiased language• displayed the ability to understand the materials presented• displayed sensitivity to the parties	<ul style="list-style-type: none">• displayed knowledge of NASD rules and procedures• displayed the ability to analyze problems/identify key issues• decided motions in a timely manner• commenced hearings on time• conducted efficient hearings
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DISPUTE RESOLUTION

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SINGLE ARBITRATOR PILOT PROGRAM

Information Booklet

NASD Dispute Resolution, Inc.



Single Arbitrator Pilot Program

Summary

On February 15, 2000, the Securities and Exchange Commission (SEC) approved the proposal of NASD Regulation, Inc., to add a new rule to the National Association of Securities Dealers, Inc. (NASD®) Code of Arbitration Procedure (Code).¹ NASD Rule 10336 is entitled "Single Arbitrator Pilot Program" and will be effective for a two-year period. The Pilot Program is voluntary and allows parties with claims of \$50,000.01 to \$200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. The Pilot Program also allows the parties to communicate directly with the single arbitrator under certain conditions. NASD Rule 10336, which became effective on May 15, 2000, will result in lower arbitration fees to the parties and will enhance the dispute resolution process by affording quicker resolution of arbitration claims by participants. NASD Rule 10336 is appended as Attachment A.

Background

In developing a proposal to provide parties in a public customer case with the alternative of a single arbitrator at a reduced cost, NASD Regulation sought feedback from the Public Investors Arbitration Bar Association, the Securities Industry Association, and the Small Firm Advisory Board of the NASD to determine if investors and the industry would support such a program. After evaluating the feedback provided, NASD Regulation decided to offer, on a trial basis, an optional modification of current Neutral List Selection System (NLSS) procedures. NLSS is a computerized program instituted in November 1998 to generate lists of proposed arbitrators (neutrals) for selection by the parties under NASD Rule 10308 of the Code.

Description Of The Single Arbitrator Pilot Program

The Single Arbitrator Pilot Program is designed to allow parties in a public customer case with claims of \$50,000.01 to \$200,000, inclusive of interest, attorneys' fees, and other costs, to agree to select a single arbitrator to hear their cases, rather than a panel of three arbitrators as would normally be the procedure under the Code. The Pilot Program excludes any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. All types of claims by all parties, including counterclaims, third-party claims, and cross-claims, are counted in the \$200,000 claim limitation. Forum fees provided for in Rule 10332(c) of the Code are not counted in the \$200,000 limitation.

The Pilot Program provides that the parties will participate in the selection of the single arbitrator through the NLSS process. After the parties receive notice that a panel of three arbitrators has been selected, the parties will have 15 days to determine whether they want to choose one of the three selected arbitrators to serve as the single arbitrator under the Pilot Program. The 15-day period corresponds with the 15-day period that parties have to select a Chairperson of the panel under Rule 10308(c)(5) of the Code. Thus, if the parties decide not to proceed in the Pilot Program, they can proceed under regular NLSS selection procedures without delay.

The Pilot Program also allows the parties to communicate directly with the arbitrators under certain conditions, a unique feature not found elsewhere in the Code.

¹ Exchange Act Release No. 42226 (February 15, 2000) (File No. SR-NASD-99-54), 65 *Federal Register* 8753 (February 22, 2000).

Frequently Asked Questions Relating To The Single Arbitrator Pilot Program

To help explain the details of the Single Arbitrator Pilot Program to investors, members, and associated persons, NASD Dispute Resolution staff issued the following comprehensive list of questions and answers:

Q. What is the Single Arbitrator Pilot Program (“Pilot Program”) designed to do?

- A. The Pilot Program is designed to allow parties with claims of \$50,000.01 to \$200,000, inclusive of interest, attorneys’ fees and other costs, to agree to select a single arbitrator to hear their cases, rather than a panel of three arbitrators as would normally be the case under the Code. This will result in lower arbitration fees and quicker resolution of arbitration claims. The Pilot Program also allows the parties to communicate directly with the arbitrators under certain conditions, as described below.

Q. Is the Pilot Program mandatory or voluntary?

- A. The Pilot Program is voluntary. All parties must agree to the use of the Pilot Program.

Q. What types of claims are eligible for the Pilot Program?

- A. Claims arising between a customer and an associated person or a member are eligible for the Pilot Program. The Pilot Program will be limited to cases involving aggregate claims between \$50,000.01 and \$200,000. Cases involving claims of \$50,000 or less normally have only one arbitrator under the Code.

Q. Are there any types of claims not eligible for the Pilot Program?

- A. The Pilot Program is not available for the resolution of employment disputes or other intra-industry disputes.

Q. Are claims that include a request for punitive damages eligible for the Pilot Program?

- A. No. The Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. If the parties agree to include requests for punitive damages, the \$200,000 limitation will still apply unless the parties agree to a higher amount.

Q. Will interest, attorneys’ fees, and other costs be included within the Pilot Program’s \$200,000 claim limitation?

- A. Yes.

Q. Will filing fees, hearing session fees, member surcharges, and member process fees be included within the Pilot Program’s \$200,000 claim limitation?

- A. No.

Q. Will all types of claims by all parties, including any counterclaims, third-party claims, and cross-claims be counted towards the \$200,000 limitation?

- A. Yes.

Q. When do the parties decide on whether to use the Single Arbitrator Pilot Program?

- A. The parties will participate in the usual arbitrator selection method provided under the Code, known as the Neutral List Selection System. After the parties receive notice that a panel of three arbitrators has been selected, Rule 10308(c)(5) of the Code provides that they have 15 days in which to select a Chairperson. If it appears that the case fits the criteria for the Pilot Program, the parties can determine pursuant to Rule 10336(b)(1) whether they want to choose one of their three selected arbitrators to serve as the single arbitrator in the Pilot Program.

Q. May the parties choose any of the three arbitrators as the single arbitrator?

A. Yes. The parties may choose any of the three arbitrators, including the non-public arbitrator, to serve as the single arbitrator.

Q. How many days do the parties have to agree on a single arbitrator?

A. Rule 10336(b)(2) provides that the parties will have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a Chairperson under Rule 10308(c)(5).

Q. What if the parties do not agree on a single arbitrator?

A. If the parties do not agree on a single arbitrator, Rule 10336(b)(3) provides that the case will proceed under the usual procedures of Rule 10308. This means the case will be heard by a panel of three arbitrators, with the parties being given a chance to select the Chairperson from among these arbitrators.

Q. May parties communicate orally with the arbitrator outside the presence of other parties?

A. No. The parties may not communicate orally with the arbitrator unless all parties participate.

Q. May the parties communicate directly in writing with the single arbitrator?

A. Yes. The Pilot Program will allow parties to agree to communicate directly with the arbitrator without NASD Dispute Resolution staff involvement. Rule 10336(c)(1) provides that parties will be permitted to send written materials, including information (discovery) requests and motions, directly to the selected arbitrator. This is different from the procedures normally used under the Code, and is a special feature of the Pilot Program. Copies of such materials must be sent simultaneously and in the same manner to all parties and to the NASD Dispute Resolution staff member assigned to the case.

Q. Are the parties required to send proof of service of written materials?

A. Yes. Parties must send to the NASD Dispute Resolution staff member assigned to the case, the arbitrator, and all parties proof of service of written materials, indicating the time, date, and manner of service upon the arbitrator and all parties.

Q. Do you require a particular format for proof of service?

A. No. Parties may use the same type of Certificate of Service used in state or federal courts or another format that includes the necessary information, including the address to which the materials were sent. As is true under Rule 5(b) of the Federal Rules of Civil Procedure, service by mail is complete upon mailing.

Q. May parties serve the materials on the arbitrator by facsimile (fax) or other electronic means?

A. Yes. If the arbitrator and all parties agree, written materials may be served by fax or other electronic means. Such agreement might be given at the point of entry into the Pilot Program or at any time thereafter by providing an electronic mail (e-mail) address or a fax number. Once such agreement is reached, it will be presumed to continue unless the arbitrator and parties are notified otherwise. If the arbitrator or any party does not have access to an electronic means of communication, then such means may not be used.

Q. May parties initiate conference calls with the arbitrator?

A. Yes. Rule 10336(c)(2) provides that, if the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call.

Q. May the arbitrator initiate conference calls with the parties?

- A. Yes. Rule 10336(c)(3) provides that the arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins.

Q. Will filing fees, member surcharges, and member process fees change under the Pilot Program?

- A. No.

Q. Are any fees reduced in the Pilot Program?

- A. Yes. Hearing session fees have been reduced in the Pilot Program to reflect lower arbitrator honoraria (payments) and other cost savings:

For claims of \$50,000.01 to \$100,000, hearing session fees under the Pilot Program will be \$550 per session or \$1,100 for a two session day.

For claims of \$100,000.01 to \$200,000, hearing session fees under the Pilot Program will be \$750 per session or \$1,500 for a two session day.

Q. What are the savings?

- A. For claims of \$50,000.01 to \$100,000, the Pilot Program fee structure represents a reduction of \$200 per session for the parties as compared with normal case procedures (or a \$400 reduction for a two session day).

For claims of \$100,000.01 to \$200,000, the new fee structure represents a reduction of \$375 per session for the parties as compared with normal case procedures (or a \$750 reduction for a two session day).

Q. What if, after agreeing to the Single Arbitrator Pilot Program, a party learns of information that leads the party to believe there are additional claims or higher claims than originally made, which would raise the total amount in controversy over the \$200,000 maximum for the Pilot Program?

- A. Because the Pilot Program is designed to add flexibility to the Code, parties and arbitrators faced with these facts could, for example, agree to continue with a single arbitrator who would be empowered to award more than \$200,000, or determine whether two other arbitrators already ranked in the initial list selection process might still be available, allowing the case to continue without serious interruption as a three-arbitrator case (fees would be adjusted to the normal three-arbitrator schedule).

The single arbitrator has discretion to determine whether to allow a party to file a new or amended pleading, except when a party is responding to a new or amended pleading. See Rule 10328(b). Accordingly, if a party seeks to amend a pleading to raise the total amount in controversy over the \$200,000 maximum, the party must first receive the arbitrator's consent.

Q. What if the parties do not agree to amend the claim and continue with either a single arbitrator or a three-arbitrator panel?

- A. A party may move to dismiss the claim without prejudice and, if the arbitrator grants the motion, the claim can then be re-filed as a regular, three-person case. Parties considering the option to re-file the revised claim as a regular, three-arbitrator case should understand that filing a new case would involve the payment of the initial filing fees and hearing session deposit for the new case. They should also consider any applicable eligibility or statute of limitations defenses the new filing date might raise.

Q. What is the procedure for seeking a dismissal without prejudice?

- A. Rule 10305(a) provides that arbitrators may dismiss a proceeding at the request of a party or on the arbitrator's own initiative. Another party to the case may object to the dismissal. The single arbitrator has the discretion to determine whether or not to grant a request for dismissal. Rule 10305(c) provides that arbitrators shall dismiss a proceeding at the joint request of all the parties.

Q. What happens if the request to dismiss without prejudice is denied?

- A. If the request to dismiss is denied, then the case will proceed with the single arbitrator, who cannot award more than the \$200,000 jurisdictional limit (unless the parties have agreed otherwise).

Q. What happens if the request to dismiss without prejudice is granted?

- A. When a case is dismissed, hearing session deposits will be returned for any hearings that were not held. Filing fees, member surcharges, and process fees are non-refundable. If any hearing sessions were held, the arbitrator will determine the allocation of forum fees.

Q. Where can I get more information on the Pilot Program?

- A. Speak with the staff in any NASD Dispute Resolution office, or visit the NASD Dispute Resolution Web Site at www.nasdadr.com.

ATTACHMENT A

10336. Single Arbitrator Pilot Program

This Rule allows parties with claims of \$50,000.01 to \$200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. This Pilot Program is voluntary, and includes provisions that allow the parties to communicate directly with the arbitrators under certain conditions. The Pilot Program should result in lower arbitration fees and quicker resolution of arbitration claims for participants.

(a) Claims Eligible for Single Arbitrator Pilot Program

(1) Claims arising between a customer and an associated person or a member for amounts from \$50,000.01 to \$200,000, including damages, interest, costs, and attorneys' fees, will be eligible to be heard by a single arbitrator pursuant to this Rule ("Pilot Program"), except as provided in paragraph (a)(2) or (b)(3) below.

(2) Claims that include a request for punitive damages will not be eligible for the Pilot Program unless all parties agree.

(b) Arbitrator Selection Procedure

(1) After parties receive notice that a panel of three arbitrators has been selected for their case, as provided in Rule 10308, the parties may agree to have one of the arbitrators serve as the single arbitrator who will hear their case.

(2) The parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5).

(3) If the parties do not agree to have one of the arbitrators serve as the single arbitrator, then the claim will not be eligible for the Pilot Program and will proceed instead under the usual procedures of Rule 10308.

(c) Communications with Arbitrators

(1) Parties may send written materials, including information requests and motions, directly to the single arbitrator, provided that copies of such materials are sent simultaneously and in the same manner to all parties and to the Director. Parties shall send the Director, arbitrator, and all parties proof of service of such written materials, indicating the time, date, and manner of service upon the arbitrator and all parties. Service by mail is complete upon mailing. If the arbitrator and all parties agree, written materials may be served electronically.

(2) If the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call. At the discretion of the arbitrator, such conference calls may be tape recorded.

(3) The arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins. At the discretion of the arbitrator, such conference calls may be tape recorded.

(4) Parties may not communicate orally with the arbitrator unless all parties are present.

(d) Fees

(1) Filing fees, member surcharges, and process fees for the Pilot Program will be the same as in Rules 10332 and 10333.

(2) Hearing session deposits for the Pilot Program are as follows:

(A) Hearing session deposits for claims of \$50,000.01 to \$100,000 will be \$550 per session.

(B) Hearing session deposits for claims of \$100,000.01 to \$200,000 will be \$750 per session.

(C) The forum fee for a telephone pre-hearing conference call with the arbitrator will be \$450.

(e) Awards

The single arbitrator may not award the parties more than a total of \$200,000, including damages, interest, costs, and attorneys' fees, unless all parties agree that the arbitrator may award a larger amount. In addition, the arbitrator shall allocate forum fees to the parties as provided in Rule 10332(c).

(f) Applicability of Code

Except as provided in this Rule, the remaining provisions of the Code will apply to the Pilot Program.

(g) Temporary Effectiveness

This Rule shall remain in effect until May 15, 2002.

**INITIAL PREHEARING CONFERENCE
Arbitrator's Script**

[The script is in a regular typeface size. Information in brackets, in italics, is intended to clarify a point for the arbitrator and does not need to be read to the parties. The arbitration panel must be prepared for the conference call and have its schedule/calendar available. The conference operator may call you up to five minutes before or after the appointed time.]

The panel Chairperson has the responsibility to record the agreements reached during the conference on the Initial Prehearing Conference Scheduling Order (Scheduling Order). The Chairperson should submit the enclosed Scheduling Order to NASD Dispute Resolution, Inc. within 48 hours. The Chairperson may do so by electronic mail or facsimile transmission.

The Initial Prehearing Conference ("IPHC") procedures set forth below should be followed, but may, in the panel's discretion, be varied to allow all parties a full and fair opportunity to present their respective positions. If a member of the NASD Dispute Resolution staff participates in the conference, he or she should speak with the Chairperson before the IPHC to discuss their respective parts of the script. If a staff member is present, he/she will begin by introducing the Arbitrators. If a staff member is not present, this function will be performed by the Chairperson.]

- A. Introduction of the Arbitrators: We will begin by briefly introducing ourselves.
- B. Will the parties or their representatives introduce themselves and any others who are listening on their end of the line? Since we cannot see each other, please continue to identify yourself by name whenever you speak.
- C. The panel will now make any disclosure that was not previously contained in the Arbitrator Disclosure Report.

[This shall include all disclosures previously made, including any disclosures resulting from the Arbitrator Disclosure Checklist, in addition to new disclosures. Arbitrators are reminded that any change in their classification as a public or non-public arbitrator must also be disclosed.]

As Chairperson, I have the following disclosures *[convey disclosure, if appropriate.]*

- D. Do the parties confirm acceptance of the panel's composition?

[If a party exercises a successful challenge for cause against the Chairperson, ask the parties if they are willing to allow the staff to complete the IPHC by reading from the script – with the understanding that the staff will not make any rulings. If the parties do not agree to continuing the IPHC led by the staff member, schedule a new IPHC date / time and end the IPHC. Generally, if the causal challenge is made to a panelist, complete the IPHC with the remaining panelist and yourself. Staff will replace the challenged arbitrator.]

- E. Oath of Arbitrators: As Chairperson, I confirm that I have executed my oath and submitted it to NASD Dispute Resolution. Have the other panelists submitted their oaths?

*[If not, inquire as to whether each arbitrator has read and reviewed the NASD's **Temporary and Permanent Arbitrator Disqualification Criteria**, the **Arbitrator Disclosure Checklist** and the **Arbitrator Disclosure Report**. If an arbitrator has not received and reviewed the above items, they are not permitted to rule on any item on today's agenda. If they have reviewed the items, then administer the oath as follows:*

"Do you, as an arbitrator(s) selected to hear this matter in controversy, solemnly swear or affirm that you are not an employer of, employed by, or related by blood or marriage to any of the parties or witnesses whose names have been disclosed to you; that you have no direct or indirect interest in this matter; that you know of no existing or past financial, business, professional, family, or social relationship which would impair you from performing your duties; and that you will decide the controversy in a fair manner, and render a just award?"

*Do you swear or affirm that, based on the NASD's **Temporary and Permanent Arbitrator Disqualification Criteria**, you are not temporarily or permanently disqualified from being an NASD arbitrator?*

*Having reviewed the **Arbitrator Disclosure Checklist**, do you certify that you have made all disclosures of items on the **Arbitrator Disclosure Checklist**?*

*Do you swear or affirm that your **Arbitrator Disclosure Report** is accurate, current, and up to date, and that you have no additional disclosures to make?"*

The Chairperson should make sure that the oaths are executed in writing and given to the NASD Dispute Resolution staff for completion of the case file.]

- F. We acknowledge and identify that the following pleadings have been filed by the parties and read by the panel: *[list documents]*.
- G. Mediation: We want to remind the parties that NASD Dispute Resolution has a successful, voluntary mediation program. Mediation is an informal process in which a mediator facilitates negotiations between disputing parties. The mediator's role is to help the parties find a mutually acceptable solution to the dispute. Parties who mediate at this forum resolve four out of every five cases.

NASD Dispute Resolution mediators are trained and experienced in helping parties resolve their disputes. In addition, many are experienced arbitrators, attorneys, and securities industry professionals knowledgeable in employment and securities issues.

The mediation process is designed to proceed on a parallel track with this arbitration, so it does not interfere with the scheduled hearing dates or other matters agreed to during the course of this prehearing conference. If you are interested in mediation, contact the staff member assigned to this case for more information.

Although mediation is entirely **voluntary**, we suggest that the parties select a tentative date for mediation – with sufficient lead time to resolve this controversy prior to the first hearing.

1. Are the parties ready to select a tentative date for mediation?

[If the parties wish to voluntarily schedule a date for mediation, include it in the Scheduling Order and inform staff.]

*[Now schedule the **arbitration** dates. Some arbitrators prefer to select the hearing dates first, others prefer to set the discovery schedule first. It is your option. If you prefer handling discovery first, jump to section "I" of this script. If you prefer to schedule hearing dates first, proceed to the next section of this script.*

During the IPHC dates are to be set regardless of a party's failure to prepare for the selection of any of the dates.]

- H. Selection of Hearing Dates: We begin with the scheduling of hearing dates and we remind the parties that it is better to set aside extra dates to avoid delay in the arbitration process.
1. Have the parties agreed to hearing dates for consideration by the panel?
 - a. [If yes, discuss the dates with the panel.]
 - b. [If no, find out how many days will be required. Continue by requesting the parties' availability for the hearings, on a month-by-month basis, until sufficient dates have been selected.]
 2. If parties schedule a substantial number of days, the panel may order the parties to pre-pay for the hearings. The deposit may be refunded if the case settles or withdraws more than eight business days before the first scheduled hearing date.
- I. Discovery Cut-Off Date:

[For cases involving public customers]

We would like to confirm that all parties have received a copy of the Discovery Guide available for use in customer arbitrations. Has anyone not received a copy? *[If anyone has not received a copy, advise NASD Dispute Resolution staff to send a copy to the party who has not received the Guide.]*

Please be aware that the Discovery Guide is a **guide** for the parties and arbitrators to use in discovery. It does not preclude the parties from voluntarily agreeing to a different method of document exchange, nor does it preclude the arbitrators from ordering discovery outside what is listed in the Guide's Document Production Lists.

The documents described in Document Production Lists 1 and 2 are presumptively discoverable. Unless the parties have already done so, documents in Lists 1 and 2 shall be exchanged within 30 days of this date unless there is a written objection. Any additional requests shall be satisfied or objected to within 30 days from the date of service of the document request. Are there any questions?

[For customer and industry cases]

We would like to hear from the parties regarding the establishment of discovery cut-off dates. Please be aware that a due date means the documents are to be **received** by opposing parties by 5:00 p.m. on the cut-off date. At the same time and date parties must file with NASD Dispute Resolution only the cover letter reflecting that the documents have been sent.

[If the parties cannot agree, the Chairperson may set the deadline for responding to the filed discovery request. NASD Rule 10321(b) provides that information requests shall be satisfied or objected to within 30 calendar days from the date of service. This Rule also provides that the response to such objections shall be served within 10 calendar days of receipt of the objection.]

- J. Motion Deadlines: We now need to establish deadlines for the submission of any motion and

responses. We will also establish dates for replies.

[If it appears that a dispositive motion will be filed, schedule a tentative date for another prehearing conference. Remind the parties that the panel will decide whether another prehearing conference is needed only after reading the motion papers.]

NASD Dispute Resolution suggests that the following briefing schedule be used for all unanticipated motions not specifically addressed by the arbitrators during this conference: 1) After a party files an unanticipated motion, any opposition to the motion shall be filed within 14 calendar days of the date the motion is served; and 2) Any reply shall be submitted 7 calendar days after the date of service of the opposition.]

The parties are reminded to use the same form of service with one another as used when filing with NASD Dispute Resolution, and to do so simultaneously.

- K. Canceled Conferences: Parties are instructed to notify NASD Dispute Resolution when scheduled prehearing conferences are no longer needed. NASD Dispute Resolution should be notified at least 24 hours prior to the scheduled conference.

- L. Legal Issues: Are there any unique legal issues that would warrant the filing of briefs in this case?

[If so, set deadlines for the submission of the briefs and request that the parties attach all cases cited. The briefs should be simultaneously exchanged by the parties and submitted to NASD Dispute Resolution.]

- M. Party-Arbitrator Communication: We remind the parties that they may not communicate with any member of the panel except in the presence of all parties or representatives and that all correspondence and pleadings must be sent to the NASD Dispute Resolution staff for distribution to the panel.

- N. Other Matters: Are there any other matters that need to be addressed at this time?

- O. Conclusion: As Chairperson, I am submitting to a Scheduling Order which confirms what we've agreed to here today. NASD Dispute Resolution will send a copy of this order to all parties or their representatives. As I read the order, tell me if any statement is incorrect.

[Read the dates and information you recorded in the Order.]

Please do not expect the staff to send letters reminding you of your deadlines. These are your responsibilities.

Parties shall submit the appropriate number of copies to staff and shall simultaneously serve one another. Parties are reminded again to use the same form of service with one another as used when filing with NASD Dispute Resolution, and to do so simultaneously.

Thank you for your participation.

Executive Session:

Reconnect with an MCI operator pursuant to the instructions you received at the outset of the call. Confirm with the operator that only the arbitrators are on the line.

1. Additional Session Deposits: Discuss and decide whether the parties must make additional hearing session deposits pursuant to NASD Rules 10205 or 10332 if multiple hearing sessions have been scheduled.
2. Assessment of IPHC: Discuss and decide whether and how the fee for the IPHC shall be apportioned (who bears the cost) if the matter settles without a hearing.

NASD DISPUTE RESOLUTION

INITIAL PREHEARING CONFERENCE
SCHEDULING ORDER IN THE MATTER OF: _____

CLAIMANT(S): _____

RESPONDENT(S): _____

CASE #: _____

An initial prehearing telephonic conference was held in the above captioned matter on _____
(month/date/year). Participating in the hearing were: [list of individuals]

Chairperson: _____

Panelist: _____

Panelist: _____

Claimant's Representative: _____

#1 Respondent's Representative: _____

#2 Respondent's Representative: _____

Office of Dispute Resolution Staff: _____

The following was agreed upon during the conference and is now entered as the Initial Prehearing
Conference Scheduling Order.

The parties accepted the panel's composition. (If not, please explain.)

The first scheduled hearing session in this matter shall begin at: _____ (time)
on _____ (month/date/year). The following dates have also been reserved
for this hearing:

The agreed upon mediation date is _____ (month/day/year).

The parties are reminded to follow the guidance presented in the NASD Dispute Resolution Discovery Guide and Document Production Lists. Additional discovery requests shall be filed and responded to pursuant to the following dates.

Claimant(s) shall make its discovery request by: _____

Respondent(s) shall comply with the discovery request by: _____

Respondent(s) shall make its discovery request by: _____

Claimant(s) shall comply with the discovery request by: _____

All motions shall be filed by: _____

Any response is due by: _____

If the panel determines that additional replies will be permitted, they are due by:

The arbitrators (Chairperson) and parties have tentatively reserved _____ (month/day/year) at _____ (time) for a prehearing date to resolve any motions.

If prehearing briefs are filed, they shall be filed by:

Other rulings (i.e., extra fees to be deposited):

If the parties settle this matter with no further hearings, then the cost of this IPHC shall be borne as follows:

This order shall remain in effect unless amended by the Arbitration Panel.

Dated:

Chairperson
on behalf of the Arbitration Panel