

Notice to Members

AUGUST 2004

SUGGESTED ROUTING

Legal & Compliance

KEY TOPICS

Arbitration

Arbitrators

Dispute Resolution

GUIDANCE

Arbitration Chairperson Selection

SEC Approves Amendments to Rule 10308 Regarding the Time for Chairperson Selection; **Effective Date: September 17, 2004**

Executive Summary

The Securities and Exchange Commission has approved amendments to Rule 10308 of the NASD Code of Arbitration Procedure to reduce the time allotted for the selection of a chairperson in an arbitration proceeding.¹

The text of the amendments is set forth in Attachment A. The amendments will be effective on September 17, 2004.

Questions/Further Information

Questions regarding this Notice may be directed to Richard Berry, Associate Vice President and Director of Case Administration, at (212) 858-4307 or richard.berry@nasd.com; or John D. Nachmann, Counsel, NASD Dispute Resolution, at (202) 728-8273 or john.nachmann@nasd.com.

Discussion

Rule 10308 sets forth the procedures for the selection of arbitrators and chairpersons for an arbitration panel. First, the parties receive a list of potential arbitrators to serve on the arbitration panel, then they may strike the names of one or more arbitrators for any reason and rank the remaining names. Once the parties' lists are consolidated, Dispute Resolution staff sends a notice to the parties of the arbitrators who have been selected for the panel, and the parties then have 15 days to select one of these arbitrators to be the chairperson.² If the parties are unable to agree on the selection of

the chairperson, Dispute Resolution staff will select the chairperson of the arbitration panel based on the criteria enumerated in Rule 10308(c)(5).³

Since parties are unable to agree on a chairperson in nearly 80 percent of the cases, NASD has decreased the time period for parties to select the chairperson from 15 days to seven days. This reduction in the time period will expedite the arbitration process while at the same time generally providing parties with sufficient time to reach an agreement on a chairperson if they are so inclined. However, if the parties need more time in which to reach agreement on a chairperson, they can notify Dispute Resolution staff of this fact prior to expiration of the seven-day deadline and Dispute Resolution staff will extend the time to select a chairperson for an additional eight days.⁴ If the parties are unable to agree on the selection of the chairperson within either of these timeframes, Dispute Resolution staff will continue to select the chairperson of the arbitration panel as described above.

Effective Date

The amendments will be effective on September 17, 2004 and will apply to any cases in which an arbitration panel is selected on or after September 17, 2004.

Endnotes

1. Securities Exchange Act Release No. 50036 (July 19, 2004), 69 FR 44071 (July 23, 2004) (File No. SR-NASD-2004-039).
2. In cases where the parties must respond to Dispute Resolution by mail, the computer system that tracks the parties' responses adds two days to the 15-day response deadline to account for mailing time and this adjusted response time is set forth in the letter sent to the parties.
3. Subject to certain exclusions listed in Rule 10308(c)(5), the public arbitrator who is the most highly ranked by the parties generally will be selected as the chairperson.
4. The request for an extension of the seven-day deadline must be in writing and must indicate that all parties have agreed to the extension.

ATTACHMENT A

New language is underlined; deletions are in brackets.

Code of Arbitration Procedure

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Rule 10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

(a) – (b) No change

(c) Striking, Ranking, and Appointing Arbitrators to Lists

(1) – (4) No change

(5) Selecting a Chairperson for the Panel

The parties shall have [15] 7 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties notify Dispute Resolution staff prior to the expiration of the original deadline that they need more time in which to reach an agreement, Dispute Resolution staff will extend the time to select a chairperson for an additional 8 days. If the parties cannot agree within the allotted time, 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 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.

(6) No change

(d) – (e) No change

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