

## PACE INVESTOR RIGHTS PROJECT

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Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File Number SR-NYSE-2007-48

Dear Ms. Morris,

The Pace Investor Rights Project (PIRP) at Pace University School of Law welcomes the opportunity to comment on NYSE's proposal to adopt the NASD Codes of Arbitration Procedure as part of the consolidation of the NYSE and NASD arbitration forums. PIRP's mission is to advocate on behalf of investor justice, particularly with respect to the rights of small investors.

PIRP is writing generally to support the proposed rule because a single set of arbitration rules will reduce confusion for individual investors of limited means. Furthermore, the consolidation is beneficial to small investors because NASD rules governing claims up to \$25,000 provide greater investor choice. For claims of \$25,000 or less, NASD Rule 12800(c)(1) protects the interests of investors by allowing only the customer to request a hearing. The arbitrator cannot call for a hearing if the customer does not request one. In contrast, under current NYSE Rule 601 governing claims up to \$25,000, an arbitrator can request a hearing against the wishes of the investor.

The consolidation is also beneficial for investors with claims between \$25,000 and \$50,000 because NASD rules in that claim range generally provide for lower overall forum costs. For example, under NASD rules, a claim for \$50,000 will cost a customer \$600 for the filing fee and \$450 per session for a one arbitrator panel. Under current NYSE Rule 629(i), the same claimant will have to pay a \$120 filing fee, a \$400 hearing deposit, and under Rule 629(c)(1) could pay up to \$600 per session for a three arbitrator panel. Thus, assuming a two day hearing, the forum fees are higher at NYSE for the same damages claim of \$50,000.

However, we are concerned that, as a result of this consolidation, NYSE's pending proposal to raise the claim limit for one-arbitrator panels to \$200,000 will be abandoned. For this reason, we urge NASD, as part of the consolidation, to adopt and re-file as its own the

NYSE proposal to increase the monetary claim threshold for single arbitrator cases to \$200,000. See File No. SR-NYSE-2006-61.

We previously filed a Comment Letter supporting the rule proposal, and repeat the reasons here for the convenience of the Commission staff. Increasing the claim limit of NASD Rule 12401(b) from \$50,000 to \$200,000 would decrease the costs associated with arbitration for most investors with smaller claims and add flexibility in scheduling.

The costs of a three-arbitrator case (for claims over \$50,000), under NASD's current fee schedule, can be staggering. Few arbitration cases are completed in less than one hearing day, and it is not uncommon for a typical suitability case to last three or four days, or even longer. Under NASD Customer Code Rule 12900, a case involving alleged damages of \$51,000, for example, costs an investor \$975.00 just to file. Additionally, under NASD Customer Code Rule 12902, the forum charges the parties \$1,500 *per hearing day* (each hearing day consists of two hearing sessions, with a fee of \$750.00 per hearing session), and the arbitrator decides how to assess those fees. Thus, a three day hearing, plus a filing fee and a pre-hearing conference, could cost an investor more than \$5,000. Reducing those costs substantially by using one-arbitrator panels seems prudent, if the customer wishes to do so.

Currently, NASD's average turnaround time in months for all arbitrations through May 2007 was 13.6. See NASD Dispute Resolution, Inc., *Summary Arbitration Statistics May 2007*, <http://www.nasd.com/ArbitrationMediation/NASDDisputeResolution/Statistics/index.htm>. In the face of an increased caseload as a result of the consolidation, NASD should increase the monetary threshold for one-arbitrator panels to \$200,000. This would simplify and expedite the arbitrator selection process, as well as preserve and improve NASD Dispute Resolution's efficiency for individual investors.

Federal securities laws require that the rules of the exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. See 15 U.S.C. 78f(b)(5). The Commission should not let NYSE's proposal to increase the monetary threshold for one-arbitrator panels to \$200,000 be abandoned but should ensure that the consolidated new entity pursues it post-consolidation. The proposal promotes just and equitable principles of trade by ensuring that smaller investors and *pro se* claimants have the financial ability to have their claims heard.

Thank you for providing us with the opportunity to comment on these proposed rule changes. Please do not hesitate to contact us if you have any questions regarding these comments.

Respectfully Submitted,

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Director of Advocacy

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Student Intern