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

File No. SR - 2003 - 158
Amendment No. 7

Proposed Rule Change by National Association of Securities Dealers

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☐	☑	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Mignon
Last Name: McLemore
Title: Assistant Chief Counsel, NASD Dispute Resolution
E-mail: mignon.mclemore@nasd.com
Telephone: (202) 728-8151
Fax: (301) 527-4752

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date: 08/15/2006

By: Jean I. Feeney (Name)

Vice President and Chief Counsel, NASD Dispute Resolution (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Jean Feeney, jean.feeney@nasd.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

August 15, 2006

Ms. Lourdes Gonzalez
Assistant Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. SR-NASD-2003-158 – Amendments to the NASD Code of Arbitration Procedure for Customer Disputes - Response to Comments and Partial Amendment No. 7

Dear Ms. Gonzalez:

NASD is filing this partial Amendment No. 7 (Amendment) to make the following changes to the above rule filing, to clarify certain issues, and to respond to one of the comment letters that the Securities and Exchange Commission (SEC) received after the Response to Comments and Amendment No. 5 (Amendment No. 5) was filed.[1] If the proposal involves a change to rule language, proposed additions will be underlined and deletions will be bracketed. A marked version of the NASD Code of Arbitration Procedure for Customer Disputes (Customer Code) is included to show the changes made by the Amendment and those changes from Partial Amendment No. 6.[2]

1. Agreement of the Parties (Rule 12105)

In Amendment No. 5, in the explanatory test addressing the proposed rule, NASD provided examples of when a party might be considered inactive. The examples were not included in the rule language of Proposed Rule 12105. NASD is now proposing to add a non-exhaustive list of examples to the rule language to further clarify the meaning of the term "inactive." The proposed rule change is amended as follows:

12105. Agreement of the Parties

(a) No change.

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[1] See Amendments to the NASD Code of Arbitration Procedure for Customer Disputes - Response to Comments and Amendment No. 5; and Notice of Filing and Order Granting Accelerated Approval, filed on May 4, 2006.

[2] NASD filed Partial Amendment No. 6 on July 21, 2006. This partial amendment withdraws Proposed Rules 12504 and 13504, the dispositive motions rule and all references thereto, from the Customer and Industry Codes, to give the public additional time to provide its input on this rule without delaying the review and approval of the remaining provisions of the Customer and Industry Codes.

(b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive. For purposes of this rule, an inactive party could be, but is not limited to: (1) a party that does not answer; (2) a party that answers and then fails to respond to correspondence sent by the Director; (3) a party that answers and then fails to respond to correspondence sent by the panel in cases involving direct communication under Rule 12211; or (4) a party that does not attend pre-hearing conferences.

2. Arbitration Under an Arbitration Agreement or the Rules of NASD (Rule 12200)

At the suggestion of the SEC, NASD is clarifying that the term "business activities of a member" in Proposed Rule 12200 would include "selling away" claims (i.e., claims in which an associated person is alleged to have engaged in securities activities outside his or her firm). Under current arbitration rules, NASD accepts cases brought by customers against associated persons in selling away cases, and cases by customers against the associated person's member firm if there is any allegation that the member was or should have been involved in the events, such as an alleged failure to supervise the associated person. As stated in Amendment No. 5, Proposed Rule 12200 is not intended to change the scope of arbitrable disputes. NASD will continue to accept these types of cases under the Customer Code.

In Amendment No. 5, NASD agreed with a commenter that suggested that the insurance business activities exception should be removed from Proposed Rule 12200 because the exception could alter the scope of arbitrable disputes. NASD removed the insurance business activities exception from Proposed Rule 12200, because the exception is included in Proposed Rule 12201.

Upon further review of the Customer Code and the NASD's Code of Arbitration Procedure (current Code), NASD now believes the insurance business exception was erroneously removed from Rule 12200 and plans to reinsert it. Current Rule 10101 states that insurance disputes are not eligible for arbitration (whether on a mandatory or voluntary basis).[3] Current Rules 10201 and 10301 then define the eligible disputes that are required to be arbitrated at NASD. These rules were rearranged in the Customer Code to place the mandatory arbitration provision before the elective arbitration provision in the Customer Code. Thus, NASD believes that clarity requires the insurance exception to be included in both provisions, as NASD does not have jurisdiction over the insurance business activities of a member that is also an insurance company. The proposed rule change is, therefore, amended as follows:

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

[3] It states, "This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(iv) of the By-Laws of the Association for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company."

Parties must arbitrate a dispute under the Code if:

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

3. Loss of Defenses Due to Untimely or Incomplete Answer (Rule 12308)

NASD is proposing to make two changes to Proposed Rule 12308. First, at the suggestion of the SEC, NASD proposes to amend the last sentence of Proposed Rule 12308(a) to clarify when this rule would apply.

Second, NASD is proposing to address an issue raised by a commenter regarding the definition of "claim," under Proposed Rule 12308. In Amendment No. 5, NASD discussed an issue raised by a commenter that argued that Proposed Rule 12308(a) imposes a severe penalty for failure to answer an allegation regardless of materiality or a party's ability to investigate by the time an answer is due.

In response to this comment, NASD noted that Proposed Rule 12308 is substantially the same as Rule 10314(b)(2) of the current Code. Upon further review, NASD believes that the language of Proposed Rule 12308(a) could be read to permit a panel to impose severe penalties on a respondent for failure to timely respond to one of several allegations. This was not the intent. Current Rule 10314(b)(2)(C), which is the basis for Proposed Rule 12308(a), deals only with the timeliness of the answer, not its completeness. The other paragraphs of current Rule 10314(b)(2), dealing with completeness of answers, have been included in Proposed Rule 12308(b). NASD is, therefore, proposing to amend the rule. The proposed rule change is amended as follows:

12308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party [fails to] does not answer [any claim] within the time period specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under Rule 12801, if the conditions of Rule 12801(a) apply.

(b) No change.

4. Number of Arbitrators (Rule 12401)

Upon further review of Proposed Rule 12401, NASD is proposing to amend the rule to require that the request for a three-arbitrator panel be made in a party's initial pleading. NASD did not intend to change current practice concerning the timing of the request for a three-arbitrator panel under the proposed rule.[4] Hence, the proposed change will codify current practice in the forum. The proposed rule change is amended as follows:

12401. Number of Arbitrators

(a) Claims of $25,000 or Less

No change.

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

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

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

No change.

5. Disclosures Required of Arbitrators (Rule 12408)

At the suggestion of the SEC, NASD proposes to add explanatory language from Amendment No. 5 of the rule language of Proposed Rule 12408(a)(4) to specify the type of disclosures required of arbitrators under these circumstances. The proposed rule change is amended as follows:

12408. Disclosures Required of Arbitrators

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

(1) No change;

(2) No change;

(3) No change; and

(4) Any existing or past service as a mediator for any of the parties in the case for which the arbitrator has been selected.

(b) No change.

(c) No change.

[4] See current Rule 10308(b)(1)(A)(ii).

6. Objecting to Discovery; Waiver of Objection Rules (Rule 12508)

NASD is proposing to address an issue raised by several commenters concerning the phrase "possession or control" in Proposed Rules 12506 and 12514. These commenters argue that including the term "control" in the proposed rules could cause customers to incur increased costs to comply with these rules, which could prevent customers from gaining access to documents from third parties.

In Amendment No. 5, NASD explained that the addition of the term "control" to Proposed Rules 12506(b) and 12514(a) is intended to expand, not narrow, the range of documents that are to be produced in discovery, because respondents would be required to produce documents regardless of where the documents are stored or maintained.

NASD is sensitive to customers' concerns regarding the costs they could incur under the discovery process. Thus, NASD is proposing to amend Proposed Rule 12508 to authorize a panel, when deciding on objections, to consider the relevance of documents or discovery requests and the relevant costs and burdens to parties to comply with discovery requests. The proposed rule change is amended as follows:

12508. Objecting to Discovery; Waiver of Objection

(a) No change.

(b) No change.

(c) In making any rulings on objections, arbitrators may consider the relevance of documents or discovery requests and the relevant costs and burdens to parties to produce this information.

7. Stipulated Awards Question

NASD has been asked to address an issue raised by a commenter concerning Stipulated Awards that direct expungement relief. The commenter suggests that parties have the ability to waive the requirement that all or a majority of arbitrators sign a Stipulated Award. The commenter contends that parties can agree to permit one arbitrator to sign a Stipulated Award on behalf of the whole panel.

Under current practice, which will continue under the Customer Code, parties are not permitted to stipulate to the appointment of selected arbitrators for the sole purpose of entering a Stipulated Award. Moreover, parties may not stipulate to having only one arbitrator of a three-member panel sign the Stipulated Award. Stipulated Awards, like awards issued after a hearing on the merits, must be signed by a majority of the panel.[5]

8. Filing Fee Waiver

NASD is proposing to address an issue raised by a commenter concerning publicizing the availability of filing fee waivers. The commenter was concerned that the expense of arbitration (i.e., filing fees) may prevent access to the forum, and suggested that NASD amend Proposed Rule 12900(d) to disclose expressly that fee waivers might be granted to

[5] See Proposed Rule 12904(a).

parties who can demonstrate financial hardship. Moreover, the commenter suggested that the proposed rule should explain the practice and procedure for applying for such fee waivers as well as the criteria for granting them.

In response to this suggestion, NASD notes that the procedures to request a filing fee waiver are located on the Web site in the Uniform Forms Guide, at the following address:

http://www.nasd.com/web/groups/med_arb/documents/mediation_arbitration/nasdw_007954.pdf

For this reason, NASD is not proposing to amend Proposed Rule 12900 at this time.

9. Comment Letter Concerning List Selection Procedures

One commenter submitted a comment letter to the SEC opposing NASD's proposal to combine chair-qualified public arbitrators with other public arbitrators to select the public arbitrator for a panel.[6] The commenter contends that this proposal will divide the public arbitrator pool into two groups and, therefore, will unbalance list selection so that chair-qualified arbitrators will be selected more frequently to hear customer claims than public arbitrators. The commenter also includes statistical models, based on hypothetical criteria, in an attempt to prove this hypothesis.

NASD addressed this issue in Amendment No. 5. Prior to Amendment No. 5, Proposed Rule 12400 did not specify whether chair-qualified public arbitrators would be included in the public non-chair list. Eighteen commenters opposed including arbitrators eligible for the chairperson pool in the general public arbitrator pool, because they believed it would allow arbitrators on the chair lists to appear on panels more frequently than public arbitrators. Twenty-three commenters, however, argued that not including chair-qulaified arbitrators in the public pool would decrease the pool of experienced, knowledgeable public arbitrators, particularly in regions of the country where the size of the arbitrator pool is already limited, and that arbitration panels would have less overall experience and expertise than they currently have, which would be detrimental to all parties.

As stated in Amendment No. 5, NASD agrees that chair-qualified arbitrators should be included in the public arbitrator pool as well as in the public chair pool.[7] NASD believes that if chair-qualified arbitrators are found to be serving on panels more frequently than other public arbitrators, this result would be in the public interest, because those arbitrators with the most experience are serving on panels (and as chairs).

Lastly, NASD believes the proposed standards to become eligible to serve as chair-qualified arbitrators are reasonable and necessary to provide investors with access to well-qualified arbitrators. NASD believes this proposal will enhance the efficiency of the arbitration process, and should be approved.

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[6] See Scot Bernstein Letter, submitted May 26, 2006 to the SEC in response to Amendment No. 5. NASD is responding to this comment letter even though Amendment No. 5 has not been published in the Federal Register.

[7] NASD declines to comment on the statistical analysis provided in the comment letter. There has been no determination that the hypothesis of that letter poses a problem in the forum. NASD cannot comment on a speculative outcome.

* * *

If you have any questions, please contact me on 202.728.8151 or at mignon.mclemore@nasd.com.

Very truly yours,

Mignon McLemore
Assistant Chief Counsel
NASD Dispute Resolution, Inc.

NASD

CODE OF ARBITRATION PROCEDURE

FOR

CUSTOMER DISPUTES

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PART I INTERPRETIVE MATERIAL, DEFINITIONS, ORGANIZATION AND AUTHORITY

IM-12000. Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes

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

(a) fail to submit a dispute for arbitration under the NASD Code of Arbitration Procedure ("Code") as required by the Code;

(b) fail to comply with any injunctive order issued pursuant to the Code;

(c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law;

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD;

(f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are:

(1) customers with a claim against a member or an associated person;

(2) associated persons with a claim against a member or an associated person;

(3) members with a claim against another member; or

(4) members with a claim against an associated person that relates exclusively to a promissory note.

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

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

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

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

12100. Definitions

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

(a) Associated Person

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

(b) Award

An award is a document stating the disposition of a case.

(c) Board

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

(d) Claim

The term “claim” means an allegation or request for relief.

(e) Claimant

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

(f) Code

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

(g) Counterclaim

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

(h) Cross Claim

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

(i) Customer

A customer shall not include a broker or dealer.

(j) Day

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

(k) Director

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

(l) Dispute

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

(m) Hearing

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

(n) Hearing Session

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

(o) Member

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

(p) Non-Public Arbitrator

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

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

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

(B) Registered under the Commodity Exchange Act;

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

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

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

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

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

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

(q) Panel

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

(r) Person Associated with a Member

The term “person associated with a member” means:

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

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

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

(s) Pleadings

A pleading is a statement describing a party’s causes of action or defenses. Documents that are considered pleadings are: a statement of claim, an answer, a counterclaim, a cross claim, a third party claim, and any replies.

(t) Prehearing Conference

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

(u) Public Arbitrator

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

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

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

(3) Is not an investment adviser;

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

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

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

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

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

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

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

(v) Respondent

The term “respondent” means a party against whom a statement of claim or third party claim has been filed. A claimant against whom a counterclaim has been filed is not a respondent for purposes of the Code.

(w) Statement of Claim

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

(x) Third Party Claim

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

(y) Uniform Submission Agreement

The term “Uniform Submission Agreement” means the NASD Uniform Submission Agreement. The NASD Uniform Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

12101. Applicability of Code and Incorporation by Reference

(a) Applicability of Code

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

(b) Incorporation by Reference

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

12102. National Arbitration and Mediation Committee

(a) Pursuant to Part V(C)(1)(b) of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

(1) The NAMC shall consist of no fewer than 10 and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the chairperson of the NAMC.

(b) Pursuant to the Delegation Plan, the NAMC shall have the authority to recommend rules, regulations, procedures and amendments relating to arbitration, mediation, and other dispute resolution matters to the Board. All matters recommended by the NAMC to the Board must have been approved by a quorum, which shall consist of a majority of the NAMC, including at least 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are either (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an

agenda prior to such meeting, the requirement that at least 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived. The NAMC has such other power and authority as is necessary to carry out the purposes of the Code.

(c) The NAMC may meet as frequently as necessary, but must meet at least once a year.

12103. Director of Dispute Resolution

(a) The Board shall appoint a Director of Dispute Resolution. The Director shall perform all the administrative duties relating to arbitrations submitted under the Code. The Director may delegate his or her duties when it is appropriate, unless the Code provides otherwise.

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

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

12104. Effect of Arbitration on NASD Regulatory Activities

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

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

12105. Agreement of the Parties

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

(b) If the Director or the panel determines that a named party is inactive in the arbitration, or has failed to respond after adequate notice has been given, the Director or the panel may determine that the written agreement of that party is not required while the party is inactive or not responsive. <u>For purposes of this rule, an inactive party could be, but is not limited to: (1) a party that does not answer; (2) a party that answers and then fails to respond to correspondence sent by the Director; (3) a party that answers and then fails to respond to correspondence sent by the panel in cases involving direct</u>

communication under Rule 12211; or (4) a party that does not attend pre-hearing conferences.

PART II GENERAL ARBITRATION RULES

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

Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:

  (1) Required by a written agreement, or

  (2) Requested by the customer;

- The dispute is between a customer and a member or associated person of a member; and

- The dispute arises in connection with the business activities of the member or the associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

12201. Elective Arbitration

Parties may arbitrate a dispute under the Code if:

- The parties agree in writing to submit the dispute to arbitration under the Code after the dispute arises; and

- The dispute is between a customer and a member, associated person of a member, or other related party; and

- The dispute arises in connection with the business activities of a member or an associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

12202. Claims Against Inactive Members

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

- A member whose membership is terminated, suspended, cancelled or revoked;

- A member that has been expelled from NASD; or

- A member that is otherwise defunct.

12203. Denial of NASD Forum

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

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

12204. Class Action Claims

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

(b) Any claim that is based upon the same facts and law, and involves the same defendants as in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, shall not be arbitrated under the Code, unless the party bringing the claim files with NASD one of the following:

(1) a copy of a notice filed with the court in which the class action is pending that the party will not participate in the class action or in any recovery that may result from the class action, or has withdrawn from the class according to any conditions set by the court; or

(2) a notice that the party will not participate in the class action or in any recovery that may result from the class action.

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

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

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

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

12205. Shareholder Derivative Actions

Shareholder derivative actions may not be arbitrated under the Code.

12206. Time Limits

(a) Time Limitation on Submission of Claims

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

(b) Dismissal under Rule

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

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

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

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

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

12207. Extension of Deadlines

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

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

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

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

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

12208. Representation of Parties

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

12209. Legal Proceedings

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

12210. Ex Parte Communications

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

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

12211. Direct Communication Between Parties and Arbitrators

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

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

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

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

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

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

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

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

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

12212. Sanctions

(a) The panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel.

Unless prohibited by applicable law, sanctions may include, but are not limited to:

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

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

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

12213. Hearing Locations

(a) U.S. Hearing Location

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

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

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

(4) After the panel is appointed, the panel may decide a motion relating to changing the hearing location.

(b) Foreign Hearing Location

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

(A) met NASD background qualifications for arbitrators;

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

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

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rule 12902(c).

12214. Payment of Arbitrators

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

- $200 to each arbitrator for each hearing session in which he or she participates;
- an additional $75 per day to the chairperson for each hearing on the merits;
- $50 for travel to a hearing session that is postponed pursuant to Rule 12601; and
- $100 for each arbitrator if a hearing session other than a prehearing conference is postponed within three business days before a scheduled hearing session pursuant to Rules 12601(a)(2) and (b)(2).

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

(c) Payment for Deciding Discovery-Related Motions Without a Hearing Session

(1) NASD will pay each arbitrator an honorarium of $200 to decide a discovery-related motion without a hearing session. This paragraph does not apply to cases administered under Rule 12800.

(2) For purposes of paragraph (c)(1), a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion.

(3) The panel will allocate the cost of the honoraria under paragraph (c)(1) to the parties pursuant to Rules 12902(c).

PART III INITIATING AND RESPONDING TO CLAIMS

12300. Filing and Serving Documents

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

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

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

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

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

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

12301. Service on Associated Persons

(a) The Director will serve the initial statement of claim on an associated person directly at the person's residential address or usual place of abode. If service cannot be completed at the person's residential address or usual place of abode, the Director will serve the initial statement of claim on the associated person at the person's business address.

(b) If a member and a person currently associated with the member are named as respondents to the same arbitration, and the Director cannot complete service as provided in paragraph (a), then the Director may serve the member with the initial statement of claim on behalf of the associated person. If service is made on the member, the member must serve the associated person, even if the member will not be representing the associated person in the arbitration. If the member is not representing the associated person in the arbitration, the member must notify, and provide the associated person's current address to, all parties and the Director.

12302. Filing an Initial Statement of Claim

(a) Filing Claim with the Director

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

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

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

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

(b) Number of Copies

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

(c) Fees

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

(d) Service by Director

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

12303. Answering the Statement of Claim

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

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

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

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

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

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

12304. Answering Counterclaims

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

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

12305. Answering Cross Claims

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

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

12306. Answering Third Party Claims

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

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

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

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

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

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

12307. Deficient Claims

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

- A Uniform Submission Agreement was not filed by each claimant;
- The Uniform Submission Agreement was not properly signed and dated;
- The Uniform Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the Uniform Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;

- The claim does not specify the customer's home address at the time of the events giving rise to the dispute;

- The claim does not specify the claimant's or the claimant's representative's current address; or

- The claimant did not pay all required filing fees, unless the Director deferred the fees.

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

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

12308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party [fails to] <u>does not</u> answer [any claim] within the time period specified in the Code, the panel may, upon motion, bar that party from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Code. The party may also be subject to default proceedings under Rule 12801<u>, if the conditions of Rule 12801(a) apply</u>.

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

12309. Amending Pleadings

(a) Before Panel Appointment

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

(1) To amend a statement of claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rules 12300 and 12301.

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

(b) After Panel Appointment

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

(c) Amendments to Add Parties

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

(d) Responding to an Amended Pleading

Any party may file a response to an amended pleading, provided the response is filed and served within 20 days of receipt of the amended pleading, unless the panel determines otherwise.

12310. Answering Amended Claims

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

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

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

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

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

12311. Amendments to Amount in Dispute

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

12312. Multiple Claimants

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

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

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed. A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.

12313. Multiple Respondents

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

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

(b) After all responsive pleadings have been served, claims joined together under paragraph (a) of this rule may be separated into two or more arbitrations by the Director before a panel is appointed, or by the panel after the panel is appointed. A party whose claims were separated by the Director may make a motion to the panel in the lowest numbered case to reconsider the Director's decision.

12314. Combining Claims

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

PART IV APPOINTMENT, DISQUALIFICATION, AND AUTHORITY OF ARBITRATORS

12400. Neutral List Selection System and Arbitrator Rosters

(a) Neutral List Selection System

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

(b) Arbitrator Rosters

NASD maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in Rule 12100 (p);
- A roster of public arbitrators as defined in Rule 12100 (u); and
- A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c). Arbitrators who are eligible to serve as chairperson will also be included in the roster of public arbitrators, but will only appear on one list in a case.

(c) Eligibility for Chairperson Roster

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

- Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least two arbitrations administered by a self-regulatory organization in which hearings were held; or
- Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

12401. Number of Arbitrators

(a) Claims of $25,000 or Less

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

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

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

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

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

12402. Composition of Arbitration Panels

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

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

12403. Generating and Sending Lists to the Parties

(a) Generating Lists

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

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

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

(3) If the panel consists of three arbitrators, the Neutral List Selection System will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

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

(b) Sending Lists to Parties

(1) The Director will send the lists generated by the Neutral List Selection System to all parties at the same time, within approximately 30 days after the last answer is due. The parties will also receive employment history for the past 10 years and other background information for each arbitrator listed.

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

12404. Striking and Ranking Arbitrators

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

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

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

12405. Combining Lists

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

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.

- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.

- The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

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

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

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

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

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

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

12407. Additional Parties

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

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

the panel grants the motion to add the party, the newly added party may not strike and rank the arbitrators, but may challenge an arbitrator for cause in accordance with Rule 12410.

12408. Disclosures Required of Arbitrators

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

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

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

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

(4) Any existing or past service as a mediator <u>for any of the parties in the case for which the arbitrator has been selected</u>.

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

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

12409. Arbitrator Recusal

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

12410. Removal of Arbitrator by Director

(a) Before First Hearing Session Begins

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

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

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

(b) After First Hearing Session Begins

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

12411. Replacement of Arbitrators

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

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

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

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

12412. Director's Discretionary Authority

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

12413. Jurisdiction of Panel and Authority to Interpret the Code

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

12414. Determinations of Arbitration Panel

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

PART V PREHEARING PROCEDURES AND DISCOVERY

12500. Initial Prehearing Conference

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

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

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

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

12501. Other Prehearing Conferences

(a) A prehearing conference may be scheduled upon the joint request of the parties or at the discretion of the Director. The Director will set the time and place of the prehearing conference and appoint a person to preside.

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

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

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

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

12502. Recording Prehearing Conferences

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

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

12503. Motions

(a) Motions

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

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

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

(4) Motions to amend a pleading after panel appointment pursuant to Rule 12309(b) must be accompanied by copies of the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. If a party moves to amend a pleading to add a party, the motion must be served on all parties, including the party to be added, and the party to be added may respond to the

motion in accordance with paragraph Rule 12309(c) without waiving any rights or objections under the Code.

(b) Responding to Motions

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

(c) Authority to Decide Motions

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

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

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

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

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

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

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

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

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

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

12505. Cooperation of Parties in Discovery

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

12506. Document Production Lists

(a) Applicability of Document Production Lists

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

(b) Time for Responding to Document Production Lists

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

- Produce to all other parties all documents in their possession or control that are described in the Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged;

- Identify and explain the reason that specific documents described in Document Production Lists 1 and 2, and any other Document Production List that is applicable based on the cause(s) of action alleged, cannot be produced within the required time, and state when the documents will be produced; or

- Object as provided in Rule 12508.

(2) A party must act in good faith when complying with subparagraph (1) of this rule. “Good faith” means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document.

(c) Redacted Information

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

12507. Other Discovery Requests

(a) Making Other Discovery Requests

(1) Parties may also request additional documents or information from any party by serving a written request directly on the party. Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require narrative answers or fact finding. Standard interrogatories are generally not permitted in arbitration.

(2) Other discovery requests may be served:

- On the claimant, or any respondent named in the initial statement of claim, 45 days or more after the Director serves the statement of claim; and

- On any party subsequently added to the arbitration, 45 days or more after the statement of claim is served on that party.

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

(b) Responding to Other Discovery Requests

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

- Produce the requested documents or information to all other parties;

- Identify and explain the reason that specific requested documents or information cannot be produced within the required time, and state when the documents will be produced; or

- Object as provided in Rule 12508.

(2) A party must act in good faith when complying with subparagraph (1) of this rule. "Good faith" means that a party must use its best efforts to produce all documents or information required or agreed to be produced. If a document or information cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document or information.

12508. Objecting to Discovery; Waiver of Objection

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

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

(c) In making any rulings on objections, arbitrators may consider the relevance of documents or discovery requests and the relevant costs and burdens to parties to produce this information.

12509. Motions to Compel Discovery

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

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

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

12510. Depositions

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

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

- If the panel determines that extraordinary circumstances exist.

12511. Discovery Sanctions

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

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

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

12512. Subpoenas

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

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

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

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

- The appearance of any employee or associated person of a member of NASD; or

- The production of any documents in the possession or control of such persons or members.

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

12514. Exchange of Documents and Witness Lists Before Hearing

(a) Documents and Other Materials

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

(b) Witness Lists

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

(c) Exclusion of Documents or Witnesses

Parties may not present any documents or other materials not produced and or any witnesses not identified in accordance with this rule at the hearing, unless the panel determines that good cause exists for the failure to produce the document or identify the witness. Good cause includes the need to use documents or call witnesses for rebuttal or impeachment purposes based on developments during the hearing. Documents and lists of witnesses in defense of a claim are not considered rebuttal or impeachment information and, therefore, must be exchanged by the parties.

PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD

12600. Required Hearings

(a) Hearings will be held, unless:

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

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

(c) The Director will notify the parties of the time and place at least 20 days before the hearing begins, unless the parties agree to a shorter time.

12601. Postponement of Hearings

(a) Postponement of Hearings

(1) When a Hearing Shall Be Postponed

A hearing shall be postponed by agreement of the parties.

(2) When a Hearing May Be Postponed

A hearing may be postponed:

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

(b) Postponement Fees

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

(2) If a postponement request is made by one or more parties and granted within three business days before a scheduled hearing session, the party or parties making the request shall pay an additional fee of $100 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the $100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or portion of the $100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

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

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

(c) Dismissal of Arbitration Due to Multiple Postponements

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

12602. Attendance at Hearings

The parties and their representatives are entitled to attend all hearings. Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings. The panel will decide who else may attend any or all of the hearings.

12603. Failure to Appear

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

12604. Evidence

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

(b) Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may state objections to the

introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

12605. Witness Oath

All witnesses must testify under oath or affirmation.

12606. Record of Proceedings

(a) Tape Recording

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

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

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

(b) Stenographic Record

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

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

12607. Order of Presentation of Evidence and Arguments

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

12608. Closing the Record

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

(b) In cases in which no hearing is held, the record is presumed to be closed when the Director sends the pleadings to the panel, unless the panel requests, or agrees

to accept, additional submissions from any party. If so, the record is presumed to be closed when the last such submission is due.

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

12609. Reopening the Record

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

PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD

12700. Dismissal of Proceedings Prior to Award

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

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

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

12701. Settlement

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

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

12702. Withdrawal of Claims

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

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

PART VIII SIMPLIFIED ARBITRATION AND DEFAULT PROCEEDINGS

12800. Simplified Arbitration

(a) Applicability of Rule

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

(b) Single Arbitrator

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

(c) Hearings

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

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

(d) Discovery and Additional Evidence

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

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

(e) Increases in Amount in Dispute

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

(f) Arbitrator Honoraria

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

12801. Default Proceedings

(a) Applicability of Rule

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

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

(b) Initiating Default Proceedings

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

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

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

(c) Hearings

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

(d) Amendments to Increase Relief Requested

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

(e) Awards

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

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

(f) Respondent's Answer

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

PART IX FEES AND AWARDS

12900. Fees Due When a Claim Is Filed

(a) Fees for Claims Filed by Customers, Associated Persons and Other Non-Members

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

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

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

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

(b) Fees for Claims Filed by Members

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

Fees for Claims Filed by Members

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

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

(c) Partial Refund of Filing Fee

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

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

Amount of Claim (exclusive of interest and expenses)	**Refund**
$.01 to $1,000	$25
$1,000.01 to $2,500	$50
$2,500.01 to $5,000	$125
$5,000.01 to $10,000	$250
$10,000.01 to $25,000	$300
$25,000.01 to $50,000	$450
$50,000.01 to $100,000	$750
$100,000.01 to $500,000	$1,125

Over $500,000	$1,200
Non-monetary/Not specified	$1,000

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

(d) Reimbursement of Filing Fees

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

12901. Member Surcharge

(a) Member Surcharge

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

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

Member Surcharge

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

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

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

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

(b) Refund of Member Surcharge

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

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

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

12902. Hearing Session Fees, and Other Costs and Expenses

(a) Hearing Session Fees

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

Hearing Session Fees

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

$100,000.01 to $500,000	$ 450	$1,125
Over $500,000	$ 450	$1,200
Unspecified Damages	N/A	$1,000

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

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

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

(b) Payment of Hearing Session Fees

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

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

(3) In the award, the amount of one hearing session fee will be deducted from the total amount of hearing session fees assessed against the party who paid the filing fee. If this amount is more than any fees, costs, and expenses assessed against this party under the Code, the balance will be refunded to the party.

(c) Assessment of Other Costs and Expenses in Award

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

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

If a claim is settled or withdrawn:

- The parties will be subject to an assessment of hearing session fees for hearing sessions already held.

- If NASD receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under Rule 12600 is scheduled to begin, parties that paid a filing fee under Rule 12900 will not be entitled to any refund of the filing fee.

- The parties will also be responsible for any fee or costs incurred under Rules 12502, 12513, 12601, or 12606 in connection with such hearings. If a case is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by Rule 12701(b).

(e) Refund Payments

Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made a payment on behalf of the named parties.

12903. Process Fees Paid by Members

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

- A non-refundable prehearing process fee of $750, due at the time the parties are sent arbitrator lists in accordance with Rule 12403(b); and

- A non-refundable hearing process fee, due when the parties are notified of the date and location of the hearing on the merits under Rule 12600, as set forth in the schedule below.

Hearing Process Fee Schedule

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

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

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

12904. Awards

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

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

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

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

(e) The award shall contain the following:

- The names of the parties;
- The name of the parties' representatives, if any;
- An acknowledgement by the arbitrators that they have each read the pleadings and other materials filed by the parties;
- A summary of the issues, including the type(s) of any security or product, in controversy;
- The damages and other relief requested;
- The damages and other relief awarded;
- A statement of any other issues resolved;
- The allocation of forum fees and any other fees allocable by the panel;
- The names of the arbitrators;

- The dates the claim was filed and the award rendered;
- The number and dates of hearing sessions;
- The location of the hearings; and
- The signatures of the arbitrators.

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

(g) All awards shall be made publicly available.

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

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

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

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