

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|--|---|---|--|--|--|
| Initial <input type="checkbox"/> | Amendment <input checked="" type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) <input checked="" type="checkbox"/> | Section 19(b)(3)(A) <input type="checkbox"/> | Section 19(b)(3)(B) <input type="checkbox"/> |
| | | | Rule | | |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action <input type="checkbox"/> | Date Expires <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) | |

| | |
|--|--|
| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
|--|--|

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 | <input type="text" value="John"/> | Last Name | <input type="text" value="Nachmann"/> |
| Title | <input type="text" value="Counsel"/> | | |
| E-mail | <input type="text" value="john.nachmann@nasd.com"/> | | |
| Telephone | <input type="text" value="(202) 728-8273"/> | Fax | <input type="text" value="(301) 527-4754"/> |

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 | <input type="text" value="05/04/2006"/> |
| By | <input type="text" value="Jean I. Feeney"/> |
| | (Name) |
| | <input type="text" value="Vice President and Chief Counsel, 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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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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

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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

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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

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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

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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

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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

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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.

May 4, 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-2004-011 – Amendments to the NASD Code of Arbitration Procedure for Industry Disputes - Response to Comments and Amendment No. 5; and Notice of Filing and Order Granting Accelerated Approval

Dear Ms. Gonzalez:

NASD hereby responds to the comment letter received by the Securities and Exchange Commission (SEC) with respect to the above rule filing. In this rule filing, NASD is proposing to amend the NASD Code of Arbitration Procedure (Code) to reorganize the current rules, simplify the language, codify current practices, and implement several substantive changes. This proposal was part of a series of rule filings to reorganize the current dispute resolution rules into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes (Customer Code); the NASD Code of Arbitration Procedure for Industry Disputes (Industry Code); and the NASD Code of Mediation Procedure (Mediation Code). The SEC approved the Mediation Code on October 31, 2005, and it became effective on January 30, 2006.¹

The SEC received one comment letter specifically addressing the Industry Code.² The commenter³ notes that Proposed Rule 13601(a) appears to give the parties the unfettered right to postpone the hearing whenever they agree to do so, which contradicts an arbitrator's duty to keep the cases moving toward resolution. The commenter suggests incorporating some provisions from the Rule 10319(c) of the Code to give the panel some express control over the number of times a case may be postponed and to eliminate repeat postponements.

The commenter's concerns are addressed in the response to comments and Amendment No. 5 to the Customer Code (File No. SR-NASD-2003-158). *See* Section I, Postponement of Hearings (Rule 12601).

¹ Securities Exchange Act Rel. No. 34-52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (SR-NASD-2004-013).

² *See* List of Commenters Received In Connection With SR-2004-011.

³ Elster

The SEC also received 51 comment letters addressing concerns with the Customer Code. While none of these commenters specifically address the Industry Code, many of the issues raised apply to the Industry Code, because the two codes contain similar rules and procedures. Thus, NASD has considered the comments filed in connection with the Customer Code and has made changes to the Industry Code, where relevant. Also, where appropriate, NASD is proposing to amend the Industry Code to correct typographical, grammatical and other technical errors.

To assist in the review of the Response to Comments and Amendment No. 5 of the Customer Code in the context of the Industry Code, NASD has attached a table that shows which Industry and Customer Code rules have been similarly amended in response to the comments.

If you have any questions, please contact me on (202) 728.8273 or at john.nachmann@nasd.com.

Very truly yours,

John Nachmann
Counsel
NASD Dispute Resolution, Inc.

**COMMENT LETTERS RECEIVED IN CONNECTION WITH
SR-NASD-2004-011**

1. Marvin Elster; June 30, 2005 (Elster)

**CHANGES TO CUSTOMER & INDUSTRY CODES
AS A RESULT OF COMMENT LETTERS**

| Customer Code | Industry Code |
|--|---|
| 12100 – Definitions | 13100 – Definitions |
| 12203 – Denial of NASD Forum | 13203 – Denial of NASD Forum |
| 12204 – Class Action Claims | 13204 – Class Action Claims |
| 12213 – Hearing Locations | 13213 – Hearing Locations |
| 12214 – Payment of Arbitrators | 13214 - Payment of Arbitrators |
| 12301 – Service on Associated Persons | 13301 – Service on Associated Persons |
| 12309 – Amending Pleadings | 13309 – Amending Pleadings |
| 12312 – Multiple Claimants | 13312 – Multiple Claimants |
| 12313 – Multiple Respondents | 13313 – Multiple Respondents |
| 12400(b) – Arbitrator Rosters | 13400(b) - Arbitrator Rosters |
| 12403 - Generating and Sending Lists to Parties | 13403 – Generating and Sending Lists to Parties |
| 12404 – Striking and Ranking Arbitrators | 13404 – Striking and Ranking Arbitrators |
| 12501 – Other Prehearing Conferences | 13501 – Other Prehearing Conferences |
| 12505 – Cooperation of Parties in Discovery | 13505 – Cooperation of Parties in Discovery |
| 12506(b) – Time for Responding to Documents Production Lists | |
| 12507(b) – Responding to Other Discovery Requests | 13507(b) – Responding to Discovery Requests |
| 12507(a) – Making Other Discovery Requests | 13506(a) – Discovery Requests |
| 12514(c) – Exclusions of Documents or Witnesses | 13514(c) – Exclusion of Documents or Witness |
| 12600 – Required Hearings | 13600 – Required Hearings |
| 12601 – Postponement of Hearings | 13601 – Postponement of Hearings |
| 12602 – Attendance at Hearings | 13602 – Attendance at Hearings |
| 12902(b) – Payment of Hearing Session Fees | 13902(b) - Payment of Hearing Session Fees |
| 12902(e) – Refund Payments | 13902(e) – Refund Payments |

NASD
CODE OF ARBITRATION PROCEDURE
FOR
INDUSTRY DISPUTES

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PART I INTERPRETIVE MATERIAL, DEFINITIONS, ORGANIZATION AND AUTHORITY

IM-13000. Failure to Act Under Provisions of Code of Arbitration Procedure for Industry 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 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; or
- (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.

13100. Definitions

Unless otherwise defined in the Code, terms used in the Code 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 [(p)] (r).

(b) Award

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

[(b)] (c) Board

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

[(c)] (d) Claim

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

[(d)] (e) Claimant

The term “claimant” means a party that files the statement of claim that initiates an arbitration under Rule 13302.

[(e)] (f) Code

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

[(f)] (g) Counterclaim

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

[(g)] (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.

[(h)] (i) 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.

[(i)] (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.

[(j)] (l) Dispute

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

[(k)] (m) Hearing

The term “hearing” means the hearing on the merits of an arbitration under Rule 13600.

[(l)] (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.

[(m)] (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.

[(n)] (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 [(n)] (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 [(n)] (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.

[(o)] (q) Panel

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

[(p)] (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.

[(q)] (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.

[(r)] (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 [(n)] (p)(1)-(4);

(2) Was not engaged in the conduct or activities described in paragraphs [(n)] (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 [(n)] (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 [(n)] (p)(1)-(4). For 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 [(n)] (p)(1)-(4);

(B) A member of the household of a person engaged in the conduct or activities described in paragraphs [(n)] (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 [(n)] (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 [(n)] (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.

[(s)] (v) Related Claim

For purposes of Rule 13803, the term "related claim" means any claim that arises out of the employment or termination of employment of an associated person.

[(t)] (w) 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.

[(u)] (x) Statement of Claim

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

[(v)] (y) Statutory Employment Discrimination Claim

The term “statutory employment discrimination claim” means a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute.

[(w)] (z) Temporary Injunctive Order

The term “temporary injunctive order” means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.

[(x)] (aa) 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)] (bb) 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.

13101. Applicability of Code and Incorporation by Reference

(a) Applicability of Code

The Code applies to any dispute that is submitted to arbitration under the Code pursuant to Rules 13200, 13201, or 13202.

(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.

13102. 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.

13103. 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.

13104. 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.

13105. 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.

PART II GENERAL ARBITRATION RULES

13200. Required Arbitration

(a) Generally

Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among:

- Members;
- Members and Associated Persons; or
- Associated Persons.

(b) Insurance Activities

Disputes arising out of the insurance business activities of a member that is also an insurance company are not required to be arbitrated under the Code.

13201. Statutory Employment Discrimination Claims

A claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. If the parties agree to arbitrate such a claim, the claim will be administered under Rule 13802.

13202. Claims Involving Registered Clearing Agencies

If a registered clearing agency has entered into an agreement to use NASD's arbitration facilities and procedures, any dispute, claim or controversy involving that registered clearing agency, or participants, pledges or other persons using the facilities of the registered clearing agency will be arbitrated in accordance with such agreement and the rules of the registered clearing agency.

13203. Denial of NASD Forum [and Referral to Other Forums]

(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.

13204. Class Action Claims

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

(b) [No claim that is included] 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, [will] shall not be arbitrated under the Code, unless the party bringing the claim [shows] 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 [it is not participating] 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[,if any]; 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.

13205. Shareholder Derivative Actions

Shareholder derivative actions may not be arbitrated under the Code.

13206. 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.

13207. 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.

13208. Representation of Parties

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

13209. 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.

13210. Ex Parte Communications

(a) Except as provided in Rule 13211, 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.

13211. 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.

13212. 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.

13213. 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. In cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the dispute. In cases involving members only or more than one associated person, the Director will consider a variety of factors, including:

- The parties' signed agreement to arbitrate, if any;
- Which party initiated the transaction or business in issue; and
- The location of essential witnesses and documents.

(2) Before arbitrator lists are sent to the parties under Rule 13403, 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 13503.

(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 13902(c).

13214. Payment of Arbitrators

(a) Except as provided in paragraph (b) and Rule 13800, NASD will pay the panel an honorarium, as follows:

- \$200 to each arbitrator for each hearing session in which he or she participates; [and]
- [An] 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 13601; 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 13601(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 13800.

(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 13902(c).

PART III INITIATING AND RESPONDING TO CLAIMS

13300. 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 13401. 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.

13301. Service on Associated Persons [Currently Associated with a Member]

(a) [If a member and a person currently associated with the member are named as respondents to the same arbitration,] The Director will serve the initial statement of claim on [service on the person] an associated person [with the member] directly at the person's residential address or usual place of abode [may be made on the member or directly on the associated person]. 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.

13302. 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 13307, 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.

13303. 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 13801.

(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.

13304. 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.

13305. 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.

13306. 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.

13307. 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 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.

13308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party fails to 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 13801.

(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.

13309. 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 13300 and 13301.

(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 13503. 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 13404(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 13503 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.

13310. 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 13306.

13311. 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.

13312. 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.

13313. 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.

13314. Combining Claims

Before ranked arbitrator lists are due to the Director under Rule 13404(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

13400. 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[s] Rosters

NASD maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in Rule 13100[(n)] (p);
- A roster of public arbitrators as defined in Rule 13100[(r)] (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 non-public or public arbitrators, depending on composition of the panel under Rule 13402, but will only appear on one list in a case.

(c) Eligibility for Chairperson Roster

Arbitrators are eligible to serve as chairperson of panels submitted for arbitration under the Code 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.

13401. 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 13800.

(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.

(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.

13402. Composition of Arbitration Panels in Cases Not Involving a Statutory Discrimination Claim

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions

- If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the non-public chairperson roster described in Rule 13400(c), unless the parties agree in writing otherwise.
- If the panel consists of three arbitrators, all will be non-public arbitrators. One of the arbitrators will be selected from the non-public chairperson roster described in Rule 13400(c), unless the parties agree in writing otherwise.

(b) Other Disputes Between or Among Members and Associated Persons

- If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule [13400] 12400(c) of the Code of Arbitration Procedure for Customer Disputes, unless the parties agree in writing otherwise.
- If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators. One of the public arbitrators will be selected from the chairperson roster described in Rule [13400] 12400(c) of the Code of Arbitration Procedure for Customer Disputes, unless the parties agree in writing otherwise.

13403. Generating and Sending Lists to the Parties

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) Disputes Between or Among Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions

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

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

- A list of 16 [14] arbitrators from the NASD's non-public roster; and
- A list of eight [seven] non-public arbitrators from the NASD's non-public chairperson roster.

(3) If the panel consists of three arbitrators, the Neutral List Selection System will generate the non-public chairperson list first. Chair-qualified arbitrators who were not selected for the non-public chairperson list will be eligible for selection on the non-public list. An individual arbitrator cannot appear on both the non-public chairperson list and the non-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) Other Disputes Between or Among Members and Associated Persons

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

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

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

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

(c) 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 13404(c).

13404. Striking and Ranking Arbitrators

(a) Except for lists generated pursuant to Rule 13403(a)(2), [E]each separately represented party may strike up to four [five] of the arbitrators from each list for any reason by crossing through the names of the arbitrators. At least four [Two] names must remain on each list.

(b) For lists generated pursuant to Rule 13403(a)(2), each separately represented party may strike up to eight of the arbitrators from the non-public list and up to four of the arbitrators from the non-public chairperson list for any reason by crossing through the names of the arbitrators. At least eight names must remain on the non-public list and at least four names must remain on the non-public chairperson list.

[(b)] (c) 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)] (d) 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.

13405. 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.

13406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions

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

(2) If the panel consists of three arbitrators, the Director will appoint a three-arbitrator panel consisting of:

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

(b) Other Disputes Between or Among Members and Associated Persons

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

(2) If the panel consists of three arbitrators, the Director will appoint a three-arbitrator panel consisting of:

- The highest-ranked available arbitrator from the combined non-public arbitrator list;
- The highest-ranked available arbitrator from the combined public arbitrator list; and
- The highest-ranked available arbitrator from the combined public 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 13100[(n)] (p)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 13403 and the parties will have the right to challenge the arbitrators as provided in Rule 13410.

(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.

13407. 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 13404. 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 13405. 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 13404, 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 13503 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 13410.

13408. 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.

(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.

13409. 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.

13410. 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.

(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 13408 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).

13411. 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 13403, and the parties shall have the right to object to the arbitrator as provided in Rule 13410.

(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 13100[(n)] (p)(2) or (3), unless the parties agree otherwise.

13412. 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.

13413. 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.

13414. 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

13500. 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.

13501. 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 13503, prehearing conferences may be held before a single arbitrator, generally the chairperson.

13502. Recording Prehearing Conferences

(a) Except as provided in Rule 13504, 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.

13503. 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 13504, 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 13309(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 Rule 13309(c) without waiving any rights or objections under the Code.

(b) Responding to Motions

Except as provided by Rule 13504, 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 13203 and removal of an arbitrator under Rule 13410.

(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 13409 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 13206, or to decide a claim or arbitration before a hearing under Rule 13504, unless the Code provides or the parties agree otherwise.

13504. Motions to Decide Claims Before a Hearing on the Merits

(a) Except as provided in Rule 13206, 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 13212 if it determines that a party filed a motion under this rule in bad faith.

13505. Cooperation of Parties in Discovery

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

13506. Discovery Requests

(a) Requests for Documents or Information

Parties may request 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.

(b) Making Discovery Requests

[Such] 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 should be specific and relate to the matter in controversy.

13507. Responding to Discovery Requests

(a) Unless the parties agree otherwise, within 60 days from the date a discovery request 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 13508.

(b) A party must act in good faith when complying with paragraph (a) 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) If a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled “redacted.”

13508. Objecting to Discovery Requests; Waiver of Objection

(a) If a party objects to producing any document or information requested under Rule 13506, 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.

13509. 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 Rules 13506 or 13507; or
- Objected to the production of documents or information under Rule 13508.

(b) Motions to compel discovery must be made, and will be decided, in accordance with Rule 13503. Such motions must include the disputed document request, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.

13510. 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;
- In cases involving claims of statutory employment discrimination, if necessary and consistent with the expedited nature of arbitration; and
- If the panel determines that extraordinary circumstances exist.

13511. 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 13212(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 13212(c) for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.

13512. 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.

13513. Authority of Panel to Direct Appearances of Associated Persons 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.

13514. 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, [each party] 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

13600. Required Hearings

(a) Hearings will be held, unless:

- The arbitration is administered under Rule 13800 or Rule 13801;
- 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 [10] 20 days before the hearing begins, unless the parties agree to a shorter time.

13601. Postponement of Hearings

(a) **[When a Hearing May Be Postponed] 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 [only]:

- [By agreement of the parties;]
- 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 13902. 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.

13602. 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.

13603. 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.

13604. 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.

13605. Witness Oath

All witnesses must testify under oath or affirmation.

13606. 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.

13607. 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.

13608. 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.

13609. 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

13700. 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 13206 or Rule 13504; or
- On its own initiative under Rule 13212(c) or Rule 13601(c).

13701. 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.

13702. 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; DEFAULT PROCEEDINGS; STATUTORY EMPLOYMENT DISCRIMINATION CLAIMS; AND INJUNCTIVE RELIEF

13800. 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 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

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 13401, the remaining arbitrators will be appointed by the Director in accordance with Rule 13406(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.

13801. 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.

13802. Statutory Employment Discrimination Claims

(a) Applicability of Rule

This rule applies to arbitrations involving a claim of statutory employment discrimination as defined in Rule 13100[(v)] (y). Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

(b) Number of Arbitrators

(1) Claims of \$100,000 or Less

If the amount of a claim in a case involving an employment discrimination claim is \$100,000 or less, the panel will consist of one arbitrator.

(2) Claims of More Than \$100,000

If the amount of a claim in a case involving an employment discrimination claim is more than \$100,000, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

(c) Composition of Panel

(1) One Arbitrator

If the panel consists of one arbitrator, the arbitrator will be a public arbitrator who will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise.

(2) Three Arbitrators

If the panel consists of three arbitrators, the arbitrators will all be public arbitrators, one of whom will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise. The arbitrator who meets the criteria in paragraph (c)(3) will serve as chairperson of the panel.

(3) Special Statutory Discrimination Claim Qualifications

A single arbitrator or chairperson of a three-arbitrator panel in a case involving a statutory discrimination claim must have the following qualifications:

- (A) law degree (Juris Doctor or equivalent);
- (B) membership in the Bar of any jurisdiction;
- (C) substantial familiarity with employment law; and
- (D) ten or more years of legal experience, of which at least five years must be in either:
 - law practice;
 - law school teaching;
 - government enforcement of equal employment opportunity statutes;
 - experience as a judge, arbitrator, or mediator; or
 - experience as an equal employment opportunity officer or in-house counsel of a corporation.

In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years. For purposes of this rule, the term "primarily" shall be interpreted to mean 50% or more of the arbitrator's business or professional activities within the last five years.

(4) Waiver of Special Qualifications

If all parties agree, after a dispute arises, they may waive any of the qualifications set forth in paragraph (A) or (B) above.

(d) Awards

The panel may award any relief that would be available in court under the law. The panel must issue an award setting forth a summary of the issues, including the type(s) of dispute(s), the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).

(e) Attorneys' Fees

The panel may provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law.

13803. Coordination of Statutory Employment Discrimination Claims Filed in Court and in Arbitration

(a) Option to Combine Related Claims in Court

- (1) (A) If a current or former associated person files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at NASD against some or all of the same parties, a

respondent who is named in both proceedings may, upon motion, compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.

(B) The respondent must notify the claimant in writing, before the respondent's time to answer has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to compel the claimant to assert related claims in court, except as provided in paragraph (b).

(2) (A) If a member or current or former associated person ("party") has a pending claim in arbitration against a current or former associated person and the current or former associated person thereafter asserts a related statutory discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.

(B) The party must notify the current or former associated person in writing, before filing an answer to the complaint in court, that it is exercising this option and must file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.

(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.

(b) Option Extended When Claim is Amended

(1) If the claimant files an amended statement of claim adding new claims not asserted in the original statement of claim, a respondent named in the amended statement of claim may, upon motion, compel the claimant to assert all related claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent that the court will accept jurisdiction over the related claims, even if those related claims were asserted in the original statement of claim.

(2) The respondent must notify the claimant in writing, before the time to answer the amended statement of claim has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer to the amended statement of claim without having exercised this option, it shall have waived its right to compel the claimant to assert related claims in court.

(c) Requirement to Combine All Related Claims

If a party elects to require a current or former associated person to assert all related claims in court, the party must assert in the same court proceeding all related claims that it has against the associated person to the full extent to which the court will accept jurisdiction over the related claims.

(d) Right of Respondent to Remain in Arbitration

(1) If there are multiple respondents and a respondent has exercised an option under paragraph (a) or (b), but another respondent wishes to have the claims against it remain in arbitration, then any remaining party may apply for a stay of the arbitration proceeding.

(2) If a panel has not been appointed, the Director will appoint a single arbitrator to consider the application for a stay. The single arbitrator shall be selected using the Neutral List Selection System and is not required to have the special employment arbitrator qualifications described in Rule 13801(c).

(3) If a panel has been appointed, the panel must stay the arbitration unless the panel determines that the stay would result in substantial prejudice to one or more of the parties.

(e) Pre-Filing Certification

(1) Before or at the same time that the statement of claim is filed, a claimant may file with the Director a certification that it communicated unsuccessfully with the respondent concerning the consolidation of all claims in court prior to filing a statement of claim, in an effort to save the expense of arbitration fees. A copy of such certification must be sent to the respondent at the same time and in the same manner as the filing with the Director.

(2) If, after a certification has been filed, all the respondents later exercise the option to consolidate all claims in court, the Director will return the claimant's filing fee, but will retain the member surcharge and any accrued member process fees. If there are any remaining respondents, the filing fee will be adjusted to correspond to the claims against the remaining respondents.

(f) Motion to Compel Arbitration

If a member or a current or former associated person files in court a claim against a member or a current or former associated person that includes matters that are subject to mandatory arbitration, either by the rules of NASD or by private agreement, the defending party may, upon motion, compel arbitration of the claims that are subject to mandatory arbitration.

13804. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

(a) Temporary Injunctive Orders

(1) In industry or clearing disputes required to be submitted to arbitration under the Code, parties may seek a temporary injunctive order from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief pursuant to paragraph (b) of this rule has not yet begun.

(2) A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration under the Code must, at the same time, file with the Director a statement of claim requesting permanent injunctive and all other relief with respect to the same dispute in the manner specified under the Code. The party seeking temporary injunctive relief must also serve the statement of claim requesting permanent injunctive and all other relief on all other parties in the same manner and at the same time as the statement of claim is filed with the Director.

(3) Filings and service under this rule must be made by facsimile, overnight delivery service or messenger. Service must be made on all parties at the same time and in the same manner, unless the parties agree otherwise. A party obtaining a court-issued temporary injunctive order must notify the Director and the other parties of the issuance of the order within one business day.

(b) Hearing on Request for Permanent Injunctive Relief

(1) Scheduling of Hearing

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief will begin within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. Unless the parties agree otherwise, a hearing lasting more than one day will be held on consecutive days when reasonably possible. The Director will provide to all parties notice of the date, time and place of the hearing at least three days prior to the beginning of the hearing.

(2) Composition of Arbitration Panel

The hearing on the request for permanent injunctive relief will be heard by a panel of three arbitrators. The composition of the panel will be determined in accordance with Rule 13402.

(3) Selection of Arbitrators and Chairperson

(A)

(i) In cases in which all of the members of the panel are non-public, the Director will generate and provide to the parties a list of seven arbitrators from NASD's roster of non-public arbitrators. The Director will send to the parties the employment history for the past 10 years for each listed arbitrator and other background information. At least three of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on

the consolidated list, subject to the arbitrators' availability and disqualification.

(B)

(i) In cases in which the panel consists of a majority of public arbitrators, the Director will generate and provide to the parties a list of nine arbitrators from NASD's roster of arbitrators. The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information. At least a majority of the arbitrators listed shall be public arbitrators, and at least four of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director will combine the parties' rankings, and will appoint arbitrators based on the order of rankings on the combined list, subject to the arbitrators' availability and disqualification.

(C)

(i) Each party must inform the Director of its preference of chairperson of the panel by the close of business on the next business day after receiving notice of the panel members.

(ii) If the parties do not agree on a chairperson within that time, the Director shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the Director will select a public arbitrator as chairperson. Whenever possible, the Director will select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest.

(D) The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this rule and the Code to facilitate the appointment of panels and the selection of chairperson.

(4) Applicable Legal Standard

The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.

(5) Effect of Pending Temporary Injunctive Order

Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

(6) Fees, Costs and Expenses, and Arbitrator Honorarium

(A) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the request for permanent injunctive relief. The panel may reallocate such costs and expenses among the parties in the award.

(B) Each party seeking a temporary injunctive order in court pursuant to this rule must pay a non-refundable surcharge of \$2,500 at the time the party files its statement of claim and request for permanent injunctive relief. In the award, the panel may decide that one or more parties must reimburse a party for part or all of the surcharge. The surcharge is in addition to all other non-refundable filing fees or costs that are required under the Code.

(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this rule shall receive an honorarium of \$375 for each single session, and \$700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of \$300 for each single session, and \$600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to Rule 13214. The panel may reallocate such amount among the parties in the award.

(c) Hearing on Damages or [o] Other Relief

(1) Upon completion of the hearing on the request for permanent relief, the panel may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held before the same panel and which shall include, but not be limited to, the same record.

(2) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in any subsequent hearings on damages or other relief. The panel may reallocate such costs and expenses among the parties in the award.

PART IX FEES AND AWARDS

13900. Fees Due When a Claim [is] Is Filed

(a) Fees for Claims Filed by Associated Persons

(1) Associated persons 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 13307.

Filing Fees for Claims Filed by Associated Persons

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Filing Fee</u> |
|---|-------------------|
| \$.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 13307.

Fees for Claims Filed by Members

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Filing Fee</u> |
|--|--------------------------|
| \$.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 13600 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 13902. 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 13600 is scheduled to begin.

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

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Refund</u> |
|--|----------------------|
| \$.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 13902, 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 13902.

(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.

13901. Member Surcharge

(a) 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

| <u>Amount in Dispute</u> (exclusive of interest and expenses) | <u>Surcharge</u> |
|--|-------------------------|
| 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 |

(b) 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.

(c) 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 13300.

(d) 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.

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

13902. 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 13312, 13313, or 13314, the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph.

(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 13600 is scheduled to begin, parties that paid a filing fee under Rule 13900 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 13502, 13513, 13601, or 13606 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 13701(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.

13903. 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 13403(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 13600, as set forth in the schedule below.

Hearing Process Fee Schedule

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Hearing Process Fee</u> |
|--|-----------------------------------|
| \$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.

13904. 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).

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|--|---|--------------|--|
| PART I INTERPRETIVE MATERIAL, DEFINITIONS, ORGANIZATION AND AUTHORITY | | | <p>The current Code does not contain a separate definitions section, although some rules, such as Rule 10308, include definitions applicable only to the specific rule.</p> <p>Frequent users of the forum have advised that it would be helpful to include a comprehensive definitions section that applies to the entire Code.</p> <p>Some of the definitions are based on the definitions already contained in specific rules, some are based on definitions contained in other NASD rules or By-laws, and some are based on current practice.</p> <p>All references to “rule” in the comments section of this chart refer to proposed rules.</p> |
| Failure to Act Under Provisions of Code of Arbitration | IM-13000. Failure to Act Under Provisions of Code of Arbitration Procedure for Industry Disputes It may be deemed conduct | | Interpretive Material (IM) 10100 has been renumbered as IM-13000 and moved to Part I of the Code. |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---|--|--------------|----------|
| <p>Procedure for Industry Disputes</p> | <p>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:</p> <p style="padding-left: 40px;">(a) fail to submit a dispute for arbitration under the Code as required by the Code;</p> <p style="padding-left: 40px;">(b) fail to comply with any injunctive order issued pursuant to the Code;</p> <p style="padding-left: 40px;">(c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;</p> <p style="padding-left: 40px;">(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</p> | | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---------|---|--------------|----------|
| | <p>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;</p> <p style="padding-left: 40px;">(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; or</p> <p style="padding-left: 40px;">(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:</p> <p style="padding-left: 80px;">(1) customers with a claim against a member or an associated person;</p> <p style="padding-left: 80px;">(2) associated persons with a claim against a member or an associated person;</p> | | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---------|---|--------------|----------|
| | <p>(3) members with a claim against another member; or</p> <p>(4) members with a claim against an associated person that relates exclusively to a promissory note.</p> <p>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.</p> <p>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.</p> | | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|--------------------|--|--------------|--|
| | <p>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.</p> | | |
| Definitions | <p>13100. Definitions</p> <p>Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.</p> | | |
| | <p>(a) Associated Person</p> <p>The term “associated person” or “associated person of a member” means a person associated with a member, as that term is defined in paragraph (p).</p> | | <p>In the interest of Plain English, the revised Code uses the term “associated person” to mean “person associated with a member” or “associated person of a member” as defined in NASD By-Laws.</p> |
| | <p>(b) Award</p> <p>An award is a document stating the disposition of a case.</p> | | <p><u>NASD is amending Rule 13100 to add this term to the Code.</u></p> |
| | <p>(b)] (c) Board</p> <p>[The term “Board” means the Board of Directors of NASD Dispute</p> | | |

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| | Resolution, Inc. | | |
| | <p>(c)] (d) Claim [The term “claim” means an allegation or request for relief.</p> | | <p>In paragraph (j), the term “dispute” is defined to mean “a dispute, claim or controversy.” A dispute may consist of one or more claims. Throughout the Code, the term “claim” is used to refer to a specific allegation or request for relief, while the term “dispute” refers to the entire matter submitted to arbitration.</p> |
| | <p>(d)] (e) Claimant [The term “claimant” means a party that files the statement of claim that initiates an arbitration under Rule 13302.</p> | | |
| | <p>(e)] (f) Code [The term “Code” means the Code of Arbitration Procedure for Industry Disputes. For disputes involving customers, see the NASD [c]Code of Arbitration Procedure for Customer Disputes.</p> | | <p>NASD will maintain separate Customer, Industry and Mediation Codes.</p> |
| | <p>(f)] (g) Counterclaim [The term “counterclaim” means a claim asserted against a claimant by a respondent.</p> | | |

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| | <p>(g)] (h) Cross Claim [The term "cross claim" means a claim asserted by a respondent against another already-named respondent.</p> | | |
| | <p>(i) Customer A customer shall not include a broker or dealer.</p> | | <p><u>NASD is amending Rule 13100 to add this term to the Code.</u></p> |
| | <p>(h)] (i) 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.</p> | <p>10308(a)(1) "day" For purposes of this Rule, the term "day" means calendar day.</p> | |
| | <p>(i)] (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.</p> | | |
| | <p>(j)] (l) Dispute [The term "dispute" means a dispute, claim or controversy. A dispute may consist of one or more claims.</p> | | <p>A dispute may consist of one or more claims. Throughout the Code, the term "claim" is used to refer to a specific allegation or request for relief,</p> |

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| | | | while the term "dispute" refers to the entire matter submitted to arbitration. |
| | <p>(k)] (m) Hearing [The term "hearing" means the hearing on the merits of an arbitration under Rule 13600.</p> | | |
| | <p>(l)] (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.</p> | | |
| | <p>(m)] (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> | | |
| | <p>(n)] (p) Non-Public Arbitrator [The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and: (A) is, or within the past five years, was, or within the past five years, was, a dealer (including a government securities broker or dealer or a</p> | <p>10308(a)(4) "non-public arbitrator" The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and: (A) is, or within the past 5 years, was:</p> | <p>The definition of "professional work" has been added to the definition of "non-public arbitrator," reflecting the approval of IM-10308 on March 7, 2005.</p> |

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| | <p>municipal securities dealer);</p> <p>(B) Registered under the Commodity Exchange Act;</p> <p>commodities exchange or a (C) A member of a registered futures association; or</p> <p>firm registered under the (D) Associated with a person or Commodity Exchange Act;</p> <p>(2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph [(n)] <u>(p)</u>(1);</p> <p>(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 [(n)] <u>(p)</u>(1); or</p> <p>(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</p> | <p>(i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);</p> <p>(ii) registered under the Commodity Exchange Act;</p> <p>(iii) a member of a commodities exchange or a registered futures association; or</p> <p>(iv) associated with a person or firm registered under the Commodity Exchange Act;</p> <p>(B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);</p> <p>(C) 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 subparagraph (4)(A); or</p> <p>(D) is an employee of a bank or other financial institution and effects transactions in</p> | |

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| | <p>commodities laws of employees who engage in such activities.</p> <p>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.</p> | <p>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.</p> <p style="text-align: center;">* * *</p> <p>IM-10308. Arbitrators Who Also Serve as Mediators</p> <p>Mediation services performed by mediators who are also arbitrators shall not be included in the definition of "professional work" for purposes of Rule 10308(a)(4)(C), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.</p> | |
| | <p>(o)] (q) Panel</p> <p>[The term "panel" means the arbitration panel, whether it consists of one or more arbitrators.</p> | | <p>A panel normally consists of one or three arbitrators, depending on the amount in dispute. However, a panel could consist of two arbitrators if an arbitrator is removed from a three-</p> |

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| | | | arbitrator panel, and the parties agree to proceed with only the remaining arbitrators. See Rule 13411(a). |
| | <p>(p)] (r) Person Associated with a Member</p> <p>The term "person associated with a member" means:</p> <p>under the Rules of NASD, or</p> <p>(1) A natural person registered</p> <p>office, 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.</p> <p>For purposes of the Code, a person formerly associated with a member is a person associated with a member.</p> | | This is based on Article I, Section dd, of NASD's By-Laws. |

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| | <p><u>(s) Pleadings</u> 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.</p> | | <p><u>NASD is amending Rule 13100 to add this term to the Code.</u></p> |
| | <p>[<u>(q)</u> <u>(t) Prehearing Conference</u> The term "prehearing conference" means any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins.</p> | | |
| | <p><u>(r)</u> <u>(u) Public Arbitrator</u> The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:</p> <p>(1) Is not engaged in the conduct or activities described in paragraphs [(n)] (p)(1)-(4);</p> <p>(2) Was not engaged in the conduct or activities described in paragraphs [(n)] (p)(1)-(4) for a total of 20 years or more;</p> | <p>10308(a)(5) "public arbitrator"</p> <p>(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:</p> <p>(i) is not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);</p> <p>(ii) was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or</p> | <p>The definition of "revenue" has been added to the definition of "public arbitrator," reflecting the approval of IM-10308 on March 7, 2005.</p> |

(3) Is not an investment adviser;

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| | <p>(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 [(n)] (p)(1)-(4); and</p> <p>(5) Is not the spouse or a family member of a person who is engaged in the conduct or activities described in paragraphs [(n)] (p)(1)-(4). For purposes of this rule, the term "family member" means:</p> <p style="padding-left: 40px;">child, or stepchild of any person (A) The parent, stepparent, engaged in the conduct or activities described in paragraphs [(n)] (p)(1)-(4);</p> <p style="padding-left: 40px;">household of a person engaged in the conduct or activities described in paragraphs [(n)] (p)(1)-(4);</p> <p style="padding-left: 40px;">financial support of more than 50 percent of his or her annual income from a person engaged</p> | <p>more;</p> <p>(iii) is not an investment adviser;</p> <p>(iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); and</p> <p>(v) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).</p> <p>(B) For the purpose of this Rule, the term "immediate family member" means:</p> <p>(i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);</p> | |

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| | <p>in the conduct or activities described in paragraphs [(n)] (p)(1)-(4); or</p> <p>claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs [(n)] (p)(1)-(4).</p> <p>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.</p> | <p>(ii) a member of the household of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);</p> <p>(iii) 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 (a)(4)(A) through (D); or</p> <p>(iv) 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 (a)(4)(A) through (D).</p> <p style="text-align: center;">* * *</p> <p>IM-10308. Arbitrators Who Also Serve as Mediators</p> <p style="text-align: center;">* * *</p> <p>Mediation fees received by mediators who are also arbitrators shall not be included in the definition of “revenue” for</p> | |

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| | | purposes of Rule 10308(a)(5)(A)(iv), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation. | |
| | <p>(s)] (v) Related Claim [For purposes of Rule 13803, the term "related claim" means any claim that arises out of the employment or termination of employment of an associated person.</p> | | |
| | <p>(t)] (w) 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.</p> | | |
| | <p>(u)] (x) Statement of Claim [The term "statement of claim" means the initial or amended claim filed by the party or parties initiating the arbitration.</p> | | |
| | <p>(v)] (y) Statutory Employment Discrimination Claim The term "statutory employment discrimination claim" means a claim alleging employment discrimination,</p> | | |

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| | including a sexual harassment claim, in violation of a statute | | |
| | <p>(w)] (z) Temporary Injunctive Order</p> <p>The term “temporary injunctive order” means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.</p> | | |
| | <p>(x)] (aa) Third Party Claim</p> <p>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.</p> | | |
| | <p>(y)] (bb) Uniform Submission Agreement</p> <p>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.</p> | | |
| <p>Applicability of Code and Incorporation by Reference</p> | <p>13101. Applicability of Code and Incorporation by Reference</p> <p>(a) Applicability of Code</p> | <p>10204. Applicability of Uniform Code</p> <p>Except as otherwise provided in</p> | <p>This rule has been amended to reflect the new organization of the Code, including the creation of</p> |

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| | <p>that is submitted to arbitration under the Code applies to any dispute.</p> <p>(b) Incorporation by Reference</p> <p>When a dispute is submitted pursuant to an arbitration agreement, the Code is incorporated by reference into the agreement.</p> | <p>the Rule 10200 Series, the Rules and procedures applicable to arbitrations concerning industry and clearing controversies shall be those set forth hereinafter under the Rule 10300 Series.</p> <p>10331. Incorporation By Reference</p> <p>This Code shall be deemed a part of and incorporated by reference in every agreement to arbitrate under the Rules of the Association including a duly executed Submission Agreement.</p> | <p>separate Industry and Customer Codes.</p> |
| <p>National Arbitration and Mediation Committee</p> | <p>13102. National Arbitration and Mediation Committee</p> <p>(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").</p> <p>no fewer than 10 and no more than 25 members. At least 50 percent (1) The NAMC shall consist of</p> | <p>10102. National Arbitration and Mediation Committee</p> <p>(a) The NASD Dispute Resolution Board of Directors, following the annual election of its members by the NASD Board of Governors, shall appoint a National Arbitration and Mediation Committee of such size and composition, including representation from the public at large, as it shall</p> | <p>The rule is substantially similar to the current rule, but has been updated based on the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.</p> |

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| | <p>of the NAMC shall be Non-Industry members.</p> <p>Board shall name the chairperson of the NAMC.</p> <p>(2) The Chairperson of the</p> <p>(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.</p> | <p>deem appropriate and in the public interest. The Chairman of the Committee shall be named by the Chairman of the NASD Dispute Resolution Board. The said Committee shall establish and maintain rosters of neutrals composed of persons from within and without the securities industry.</p> <p>(b) The Committee shall have the authority to recommend to the NASD Dispute Resolution Board appropriate Rules, regulations, and procedures to govern the conduct of all arbitration, mediation, and other dispute resolution matters before the Association. All Rules, regulations, and procedures and amendments thereto presented by the Committee must be by a majority vote of all the members of the said Committee. It also shall have such other power and authority as is necessary to effectuate the purposes of this Code.</p> <p>(c) The Committee shall meet at least once each year and at</p> | |

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| | <p>(f) The NAMC may meet as frequently as necessary, but must meet at least once a year.</p> | <p>such other times as are deemed necessary by the Committee.</p> | |
| <p>Director of Dispute Resolution</p> | <p>13103. Director of Dispute Resolution</p> <p>(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.</p> <p>(b) The Director shall consult with the NAMC at the NAMC's request.</p> <p>(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.</p> | <p>10103. Director of Arbitration</p> <p>The Board of Governors of the Association shall appoint a Director of Arbitration (Director) who shall be charged with the performance of all administrative duties and functions in connection with matters submitted for arbitration pursuant to this Code. The Director shall be directly responsible to the National Arbitration and Mediation Committee and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so. The duties and functions of the Director may be delegated by the Director, as appropriate. In the event of the incapacitation, resignation, removal, or other permanent or indefinite inability of the Director to perform the duties and responsibilities of</p> | <p>To reflect current corporate structure, the rule provides that the President of NASD Dispute Resolution is authorized to perform the Director's duties, and that only the President of NASD Dispute Resolution may appoint an interim director if necessary. (Under the current rule, the President of NASD Dispute Resolution or an Executive Vice President of NASD may appoint an interim Director.)</p> <p>The language in Rule 13103(b) has been changed to reflect current practice. The Director meets with the NAMC, usually every quarter, and updates the Committee on the state of the arbitration forum. At this time, the Director receives feedback and suggestions on arbitration rules and</p> |

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| | | the Director, the President or an Executive Vice President of the Association may appoint an interim Director. | procedures. |
| Effect of Arbitration on NASD Regulatory Activities | <p>13104. Effect of Arbitration on NASD Regulatory Activities</p> <p>(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.</p> <p>(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.</p> | <p>10105. Non-Waiver of Association Objects and Purposes</p> <p>The submission of any matter to arbitration under this Code shall in no way limit or preclude any right, action or determination by the Association which it would otherwise be authorized to adopt, administer or enforce. If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Association's Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Association</p> | No substantive change. |

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| | | for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to Rule 10330 of the Code. | |
| Agreement of the Parties | <p>13105. Agreement of the Parties</p> <p>(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.</p> <p>(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.</p> | | The new rule will allow active parties in arbitration to exercise control over the arbitration. |

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| PART II GENERAL ARBITRATION RULES | | | |
| Required Arbitration | <p>13200. Required Arbitration</p> <p>(a) Generally</p> <p>Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among:</p> <ul style="list-style-type: none"> • Members; • Members and Associated Persons; or • Associated Persons. <p>(b) Insurance Activities</p> <p>Disputes arising out of the business activities of a member that is also an insurance company are not required to be arbitrated under the Code.</p> | <p>10301. Required Submission</p> <p>(a) Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer</p> | <p>No substantive change.</p> <p>In the interest of having shorter, more readable rules, the substance of current Rule 10301 has been broken into several rules. The remainder of current Rule 10301(a) is now in Rule 13202. For other parts of current Rule 10301, see Rules 13203 and 13204.</p> |
| Statutory | 13201. Statutory Employment | 10101. Matters Eligible for | No substantive change. |

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| Employment Discrimination Claims | Discrimination Claims A claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. If the parties agree to arbitrate such a claim, the claim will be administered under Rule 13802. | Submission 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: (a) between or among members; (b) between or among members and associated persons; (c) between or among members or associated persons and public customers, or others; and (d) between or among | |

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| | | <p>members, registered clearing agencies with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures, and participants, pledgees, or other persons using the facilities of a registered clearing agency, as these terms are defined under the rules of such a registered clearing agency.</p> <p style="text-align: center;">* * *</p> <p>10201. Required Submission</p> <p>(b) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose.</p> | |
| <p>Claims Involving Registered Clearing Agencies</p> | <p>13202. Claims Involving Registered Clearing Agencies</p> <p>If a registered clearing agency has entered into an agreement to use</p> | <p>10201. Required Submission</p> <p>(c) Any dispute, claim or controversy involving an act or failure to act by a clearing</p> | <p>No substantive change.</p> |

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| | <p>NASD's arbitration facilities and procedures, any dispute, claim or controversy involving that registered clearing agency, or participants, pledges or other persons using the facilities of the registered clearing agency will be arbitrated in accordance with such agreement and the rules of the registered clearing agency.</p> | <p>member; a registered clearing agency; or participants, pledges, or other persons using the facilities of a registered clearing agency, under the rules of any registered clearing agency with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures shall be arbitrated in accordance with such agreement and the rules of such registered clearing agency.</p> | |
| <p>Denial of NASD Forum and Referral to Other Forums</p> | <p>13203. Denial of NASD Forum [and Referral to Other Forums]</p> <p>(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.</p> | <p>10301. Required Submission</p> <p>(b) Under this Code, the Director of Arbitration, upon approval of the Executive Committee of the National Arbitration and Mediation Committee, or the National Arbitration and Mediation Committee, shall have the right to decline the use of its arbitration facilities in any dispute, claim, or controversy, where, having due regard for the purposes of the Association and the intent of this Code,</p> | <p>To give the Director more flexibility in addressing security concerns and other unusual but serious situations that may require immediate resolution, the rule also expands the grounds upon which the Director may deny access to the forum. The requirement that the NAMC or its Executive Committee must approve decisions by the Director to deny the forum has been deleted. However,</p> |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <p>(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.</p> | <p>such dispute, claim, or controversy is not a proper subject matter for arbitration.</p> <p>(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by the Association.</p> | <p>the rule provides that the Director's authority under this rule may not be delegated or exercised by anyone other than the Director or the President of NASD Dispute Resolution.</p> <p><u>NASD is amending the title of Rule 13203, because NASD does not believe it is appropriate to offer an opinion as to any other remedies that a party might be able to pursue.</u></p> |
| <p>Class Action Claims</p> | <p>13204. Class Action Claims</p> <p>(a) Class action claims may not be arbitrated under the Code.</p> <p><u>(b) No claim that is included in 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, [will] shall not be</u></p> | <p>10301. Required Submission</p> <p>(d) Class Action Claims</p> <p>(1) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Association.</p> <p>(2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Association if the claim is encompassed by a putative or certified class action filed in</p> | <p>No substantive change.</p> <p><u>NASD is amending Rule 13204(b) to clarify when a party may opt out of a class action so an individual claim may be arbitrated, and the procedure a party would use to do so.</u></p> |

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| | <p>arbitrated under the Code, unless the party bringing the claim [shows] <u>files with NASD one of the following:</u></p> <p>(1) a copy of a notice filed with the court in which the class action is pending that [it is not participating] 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 conditions set by the court[, if any.] or;</p> <p><u>(2) a notice that the party will not participate in the class action or in any recovery that may result from the class action.</u></p> <p>(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.</p> <p>(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</p> | <p>federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self-regulatory organization for classwide arbitration. However, such claims shall be eligible for arbitration in accordance with paragraph (a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.</p> <p>Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrators in accordance with Rule 10302 or Rule 10308, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must</p> | |

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| | <p>of the certified or putative class action until:</p> <ul style="list-style-type: none"> ▪ 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. <p>This paragraph does not otherwise affect the enforceability of any rights under the Code or any other agreement.</p> | <p>be filed within ten business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrators.</p> <p>(3) No member or associated person shall seek to enforce any agreement to arbitrate against a customer, other member or person associated with a member who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (A) the class certification is denied; (B) the class is decertified; (C) the customer, other member or person associated with a member is excluded from the class by the court; or (D) the customer, other member or person associated with a member elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by</p> | |

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| | | <p>the court.</p> <p>(4) No member or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.</p> | |
| Shareholder Derivative Actions | <p>13205. Shareholder Derivative Actions</p> <p>Shareholder derivative actions may not be arbitrated under the Code.</p> | | <p>New rule. Similar to NYSE Rule 600(e).</p> |
| Time Limits | <p>13206. Time Limits</p> <p>(a) Time Limitation on Submission of Claims</p> <p>No claim shall be eligible for 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.</p> <p>(b) Dismissal under Rule</p> <p>Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a</p> | <p>[Rule] 10304. Time Limitation Upon Submission</p> <p>(a) No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. The panel will resolve any questions regarding the eligibility of a claim under this Rule.</p> <p>(b) Dismissal of a claim under</p> | <p>No substantive change.</p> |

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| | <p>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.</p> <p>(f) Effect of Rule on Time Limits</p> <p>The rule deletes the 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.</p> <p>(d) Effect of Filing a Claim in Court on Time Limits for Filing in Arbitration</p> <p>If a party submits a claim to a court, the time limitation will not run while the court retains jurisdiction of the claim matter.</p> | <p>this Rule does not prohibit a party from pursuing the claim in court. By requesting dismissal of a claim under this Rule, the requesting party agrees that if the panel dismisses a claim under the Rule, the party that filed the dismissed claim may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.</p> <p style="text-align: center;">* * *</p> <p>10307. Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration</p> <p>(a) Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall</p> | |

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| | | <p>continue for such period as the Association shall retain jurisdiction upon the matter submitted.</p> <p>(b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.</p> | |
| <p>Extension of Deadlines</p> | <p>13207. Extension of Deadlines</p> <p>(a) The parties may agree in writing to extend or modify any deadline for:</p> <ul style="list-style-type: none"> • Serving an answer; • Returning arbitrator or chairperson lists; • Responding to motions; or • Exchanging documents or witness lists. | <p>10314. Initiation of Proceedings</p> <p>(a) (5) The time period to file any pleading, whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party Pleading, may be extended for such further period as may be granted by the Director of Arbitration or with the consent of the initial claimant. Extensions of the time period to file an Answer are disfavored</p> | <p>The rule is intended to provide more guidance to parties and arbitrators regarding when and under what circumstances deadlines established by the panel and the Code may be modified or extended. It is designed to give parties maximum control over extensions of deadlines set by the Code, but to ensure that the panel retains control over deadlines established by</p> |

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| | <p>modify a deadline under this rule, they must notify the Director of the new deadline in writing.</p> <p>(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.</p> <p>(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.</p> | <p>and will not be granted by the Director except in extraordinary circumstances.</p> | <p>the panel. It also gives the Director limited authority to extend or modify any deadline or time period set by the Code for good cause. Although good cause is a lower standard than extraordinary circumstances, which refers to unexpected and uncontrollable events such as a weather-related or security emergency, good cause is not a negligible standard. In the context of the rule, the good cause requirement means that extensions of Code deadlines by the Director are generally disfavored, and that the Director must take into account the effect of the extension on all parties before granting such a request.</p> |
| <p>Representation of Parties</p> | <p>13208. Representation of Parties</p> <p>All parties have the right to be represented by counsel during any stage of an arbitration.</p> | <p>10316. Representation by Counsel</p> <p>All parties shall have the right to representation by counsel at any stage of the proceedings.</p> | <p>No substantive change.</p> |

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| Legal Proceedings | <p>13209. Legal Proceedings</p> <p>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.</p> | <p>10106. Legal Proceedings</p> <p>No party shall, during the arbitration of any matter, prosecute or commence any suit, action, or proceeding against any other party touching upon any of the matters referred to arbitration pursuant to this Code.</p> | No substantive change. |
| Ex Parte Communications | <p>13210. Ex Parte Communications</p> <p>(a) Except as provided in Rule 13211, 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.</p> <p>(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.</p> | | New rule. The rule is based on general ex parte rules applicable in court proceedings, and reflects current NASD practice. The NASD Arbitrators' Manual and NASD arbitrator training materials currently direct arbitrators to avoid ex parte communications with parties, and arbitrators receive training on how and why to do so. |
| Direct | 13211. Direct Communication | 10334. Direct Communication | No substantive change |

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| Communication Between Parties and Arbitrators | <p>Between Parties and Arbitrators</p> <p>(a) This rule provides procedures under which parties and arbitrators may communicate directly.</p> <p>(b) Only parties that are represented by counsel may use direct communication under this rule. If, during the proceeding, a party chooses to appear <i>pro se</i> (without counsel), this rule shall no longer apply.</p> <p>(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.</p> <p>(d) Parties may send the arbitrators only items that are listed in an order.</p> <p>(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.</p> | <p>Between Parties and Arbitrators</p> <p>(a) This rule provides procedures under which parties and arbitrators may communicate directly.</p> <p>(b) Only parties that are represented by counsel may use direct communication under this Rule. If, during the proceeding, a party chooses to appear <i>pro se</i> (without counsel), this Rule shall no longer apply.</p> <p>(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.</p> <p>(d) Parties may send the arbitrators only items that are listed in an order.</p> <p>(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All</p> | from Rule 10334, which the SEC approved on June 30, 2004, after the Code had been filed. |

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| | <p>(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.</p> <p>(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.</p> <p>(h) Parties may not communicate orally with any of the arbitrators outside the presence of all parties.</p> <p>(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.</p> | <p>the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.</p> <p>(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.</p> <p>(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.</p> <p>(h) Parties may not communicate orally with <u>any of</u> the arbitrators outside the presence of all parties.</p> <p>(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the</p> | |

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| <p>Sanctions</p> | <p>13212. Sanctions</p> <p>(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:</p> <ul style="list-style-type: none"> • 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. <p>(b) The panel may initiate a disciplinary referral at the conclusion of an arbitration.</p> <p>(c) The panel may dismiss a claim,</p> | <p>parties.</p> <p>10305. Dismissal of Proceedings</p> <p>(b) The arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.</p> | <p>The rule incorporates and codifies the sanctions provisions in the NASD Discovery Guide. The rule is intended to provide more guidance to parties and arbitrators regarding the scope of arbitrator authority to address noncompliance with the Code or orders of the panel. The rule also provides that the panel may sanction a party in egregious situations.</p> |

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| | <p>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.</p> | | |
| <p>Hearing Locations</p> | <p>13213. Hearing Locations</p> <p>(a) U.S. Hearing Location</p> <p>of NASD hearing locations will be (1) NASD hearing locations will be the hearing location for the arbitration. In cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the dispute. In cases involving members only or more than one associated person, the Director will consider a variety of factors, including:</p> <ul style="list-style-type: none"> • The parties' signed agreement to arbitrate, if any; • Which party initiated the transaction or business in issue; and • The location of essential witnesses and documents. | <p><u>10315. Determination of Hearing Location</u></p> <p>(a) Designation of Time and Place of Hearing</p> <p>The Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing, and shall give notice of the time and place at least 15 business days prior to the date fixed for the first meeting by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings,</p> | <p>New rule regarding U.S. Hearing Locations. Paragraph (a) codifies current practice and provides guidance to parties regarding the selection of hearing locations.</p> <p>Paragraph (b), the rule language on foreign hearing locations, reflects a proposed rule change approved by the SEC on March 7, 2005, addressing this issue after the Code had been filed.</p> <p><u>NASD is amending Rule 13213(a) to add subparagraph (4) to clarify that the panel, once appointed, has the authority to change the hearing location. This authority is included in</u></p> |

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| | <p>(2) Before arbitrator lists are sent to the parties under Rule 13403, the parties may agree in writing to a hearing location other than the one selected by the Director.</p> <p>(3) The Director may change the hearing location upon motion of a party, as set forth in Rule 13503.</p> <p>(4) After the panel is appointed, the panel may decide a motion relating to changing the hearing location.</p> <p>(b) Foreign Hearing Location</p> <p>(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:</p> <p>qualifications for arbitrators; (A) met NASD background arbitration rules and procedures; and (B) received training on NASD satisfied at least the same training and testing requirements as (C)</p> | <p>or any other type of meetings, and shall give notice as the arbitrators may determine. Attendance at a meeting waives notice thereof.</p> <p>(b) Foreign Hearing Location</p> <p>(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:</p> <p>(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.</p> <p>(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</p> | <p><u>Rule 13503(c)(2), and NASD believes that it is logical to include this authority in Rule 13213.</u></p> |

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| | <p>those arbitrators who serve in U. S. locations of NASD.</p> <p>(2) 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 13902(c).</p> | <p>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 Rules 10205 and 10332.</p> | |
| <p>Payment of Arbitrators</p> | <p>13214. Payment of Arbitrators</p> <p>(a) Except as provided in paragraph (b) and in Rule 13800, NASD will pay the panel an honorarium, as follows:</p> <ul style="list-style-type: none"> • \$200 to each arbitrator for each hearing session in which he or she participates; [and] • [A]an additional \$75 per day to the chairperson for each | <p>IM-10104. Arbitrators' Honorarium</p> <p>All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.</p> | <p>The amount of the honorarium in Simplified Arbitrations is in the Simplified Arbitration Rule, 13800.</p> <p>The reference to expenses for travel to a cancelled hearing has been removed from this rule. NASD has a comprehensive policy</p> |

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| | <p>hearing on the merits[.];</p> <ul style="list-style-type: none"> • <u>\$50 for travel to a hearing session that is postponed pursuant to Rule 13601; and</u> • <u>\$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 13601(a)(2) and (b)(2).</u> <p>(b) The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.</p> <p><u>(c) Payment for Deciding Discovery-Related Motions Without a Hearing Session</u></p> <p><u>(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 13800.</u></p> <p><u>(2) For purposes of paragraph (c)(1), a discovery-related motion and</u></p> | <p>The honorarium shall be \$200 for each hearing session and \$75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be \$125.</p> <p>The honorarium for travel to a canceled hearing session shall be \$50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of \$100.</p> <p>The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.</p> | <p>regarding arbitrator travel expenses. NASD believes that the partial and incomplete reference to travel expenses in the Code may be confusing to parties and arbitrators. NASD's policy for reimbursement of travel expenses is available at www.nasd.com.</p> <p>Paragraph (b) has been added to reflect a proposed rule change, approved by the SEC on March 7, 2005, addressing this issue after the Code had been filed.</p> <p><u>Rules 13214 (a) and (c) reflect two proposed rule changes that were approved since the last amendment to the Code was filed.</u></p> |

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| | <p><u>any replies or other correspondence relating to the motion shall be considered to be a single motion.</u></p> <p><u>(3) The panel will allocate the cost of the honoraria under paragraph (c)(1) to the parties pursuant to Rules 13902(c).</u></p> | | |

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| PART III INITIATING AND RESPONDING TO CLAIMS | | | |
| Filing and Serving Documents | <p>13300. Filing and Serving Documents</p> <p>(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 13401. The Director will serve the statement of claim on the other parties, and send copies of the statement of claim to each arbitrator.</p> <p>(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.</p> <p>(c) Unless the Code provides otherwise, parties must also file all pleadings and other documents with the Director, with additional copies for</p> | <p>10314. Initiation of Proceedings</p> <p>(c) Service and Filing with the Director of Arbitration</p> <p>(1) Service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service on a party.</p> | <p>To make rules shorter and easier to read, the substance of current Rule 10314 has been broken into several rules. Please see Rules 13300-13306; Rule 13308; and Rules 13312-13314.</p> <p>This rule is intended to provide general information about when and how pleadings must be filed and served. Paragraph (f) imposes a new requirement on parties to notify the Director of any changes in address during an arbitration. This provision is intended to streamline the administration of arbitrations and save NASD staff and parties time and resources.</p> |

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| | <p>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.</p> <p>(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.</p> <p>(e) Filing and service must occur on the same day and in the same manner, unless the parties</p> | | |

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| | <p>agree or the panel directs otherwise.</p> <p>(f) A party must inform the Director and all other parties in writing of any change of address during an arbitration.</p> | | |
| <p>Service on Persons Currently Associated with a Member</p> | <p>13301. Service on <u>Associated Persons</u> [Currently Associated with a Member]</p> <p>(a) If a member and a person currently associated with the member are named as respondents to the same arbitration,] <u>The Director will serve the initial statement of claim on [service on the person] an associated person [with the member] directly at the person's residential address or usual place of abode [may be made on the member or directly on the associated person]. 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.</u></p> <p>(b) <u>If a member and a person currently associated with the member are named as respondents to the</u></p> | <p>10314. Initiation of Proceedings</p> <p>(c) Service and Filing with the Director of Arbitration</p> <p>(2) If a member firm and a person associated with the member firm are named parties to an arbitration proceeding at the time of the filing of the Statement of Claim, service on the person associated with the member firm may be made on the associated person or the member firm, which shall perfect service upon the associated person. If the member firm does not undertake to represent the associated person, the member firm shall serve the associated person with the Statement of Claim, shall advise all parties and the Director of Arbitration</p> | <p>No substantive change.</p> <p><u>NASD did not intend to make any substantive changes to current Rule 10314, which currently permits (but does not require) the Director to serve statements of claim on active associated persons through their firms when both are respondents. In practice, however, NASD rarely uses this form of service. Therefore, NASD is amending Rule 13301 to reflect current practice concerning service in the forum and to clarify that the rule applies to initial statements of claim only.</u></p> |

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| | <p><u>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.</u> 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.</p> | <p>of that fact, and shall provide such associated person's current address.</p> | |
| <p>Filing an Initial Statement of Claim</p> | <p>13302. Filing an Initial Statement of Claim</p> <p>(a) Filing Claim with the Director</p> <p>(1) The claimant file the following with the Director:</p> <ul style="list-style-type: none"> • Signed and dated Uniform Submission Agreement; and • A statement of claim specifying the relevant facts and remedies requested. | <p>10314. Initiation of Proceedings</p> <p>Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:</p> <p>(a) Statement of Claim</p> <p>(1) The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim of the controversy in</p> | <p>Paragraph (c) of the rule codifies current practice, and provides notice to claimants that they must pay all fees required at the time of filing.</p> |

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| | <p>The claimant may include any additional documents supporting the statement of claim.</p> <p>(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.</p> <p>(b) Number of Copies One copy of the statement of claim, if it</p> | <p>dispute, together with the documents in support of the Claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.</p> <p>(2) A Claimant or counsel (referred to herein collectively as "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 an NASD Web site. In</p> | |

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| | <p>has not been submitted electronically, and the signed Uniform Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.</p> <p>(c) Fees After the claimant's statement of claim is filed, the claimant must pay all required filing fees.</p> <p>(d) Service by Director Within 30 days of the claimant's filing of the statement of claim, 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.</p> | <p>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 of Arbitration the rest of the materials required in subparagraph (1), above, along with a hard copy of the NASD Dispute Resolution Tracking Form.</p> | |
| <p>Answering the Statement of Claim</p> | <p>13303. Answering the Statement of Claim</p> <p>(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:</p> <ul style="list-style-type: none"> • Signed and dated Uniform Submission Agreement; and | <p>10314. Initiation of Proceedings</p> <p>(b) Answer – Defenses, Counterclaims, and/or Cross-Claims</p> <p>(1) Within 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission</p> | <p>Paragraph (b) of the rule provides that parties serving third party claims must include all materials served by the parties or the Director up until that point in the proceeding. This provision is intended to ensure that newly added parties are able to obtain all relevant</p> |

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| | <ul style="list-style-type: none"> • An answer specifying the relevant facts and available defenses to the statement of claim. <p>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 13801.</p> <p>(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.</p> <p>(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</p> | <p>Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all relevant facts and available defenses to the Statement of Claim submitted and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based upon any existing dispute, claim, or controversy subject to arbitration under this Code.</p> <p style="text-align: center;">* * *</p> <p>10314 Initiation of Proceedings (b) Answer – Defenses,</p> | <p>materials in a timely manner, and to expedite and streamline the administration of the arbitration. This will not apply to copies of the Code or Discovery Guide, which NASD will continue to provide.</p> |

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| | <p>documents, with the Director, with enough copies for the Director and each arbitrator.</p> <p>(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.</p> | <p>Counterclaims, and/or Cross-Claims</p> <p>(3) Respondent(s) shall serve each party with a copy of any Third-Party Claim. The Third-Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees.</p> | |
| <p>Answering Counterclaims</p> | <p>13304. Answering Counterclaims</p> <p>(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.</p> <p>(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.</p> | <p>10314. Initiation of Proceedings</p> <p>(b) Answer – Defenses, Counterclaims, and/or Cross-Claims</p> <p>(4) The Claimant shall serve each party with a Reply to a Counterclaim within ten (10) days of receipt of an Answer containing a Counterclaim. The Reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).</p> | <p>As part of the effort to standardize the time limits in the Code, the time for answering counterclaims has been extended from 10 days to 20 days. (Please see Rule 13305, in which the time to answer a cross claim has been shortened from 45 days to 20 days.) NASD believes that parties who have already filed a pleading in an arbitration should have the same amount of time to respond to a cross or counter claim, and that 10 days</p> |

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| | | | (the time the current Code provides for responding to counter claims) is too short, and 45 days (the time the current Code provides for responding to cross claims) is too long. NASD believes that 20 days is the appropriate amount of time for parties to respond to both counter and cross claims. |
| Answering Cross Claims | <p>13305. Answering Cross Claims</p> <p>(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.</p> <p>(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.</p> | <p>10314. Initiation of Proceedings</p> <p>(b) Answer – Defenses, Counterclaims, and/or Cross-Claims</p> <p>(2)(C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below, may, in the discretion of the arbitrators, be barred from presenting any matter,</p> | For the reasons explained in the comment section to Rule 13304, the time to answer a cross claim has been shortened from 45 days to 20 days. |

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| | | arguments, or defenses at the hearing. | |
| Answering Third Party Claims | <p>13306. Answering Third Party Claims</p> <p>(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:</p> <ul style="list-style-type: none"> • Signed and dated Uniform Submission Agreement; and • An answer specifying the relevant facts and available defenses to the third party claim. <p>The respondent may include any additional documents supporting the answer to the third party claim.</p> <p>(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</p> | <p>10314. Initiation of Proceedings</p> <p>(b) Answer – Defenses, Counterclaims, and/or Cross-Claims</p> <p>(3) . . . Third-Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in subparagraphs (1) and (2) above.</p> | No substantive change. |

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| | <p>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.</p> <p>(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.</p> <p>(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.</p> | | |
| Deficient Claims | <p>13307. Deficient Claims</p> <p>(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:</p> <ul style="list-style-type: none"> • A Uniform Submission Agreement was not filed by each claimant; | | <p>New rule. The rule codifies current deficiency practice. NASD believes that providing guidance to parties in the Code regarding what constitutes a deficient claim will help parties avoid deficiencies, which will reduce delay and expedite the</p> |

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| | <ul style="list-style-type: none"> • 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 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. <p>(b) The Director will notify the claimant in writing if</p> | | administration of arbitrations. |

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| | <p>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.</p> <p>(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.</p> | | |
| Loss of Defenses Due to | 13308. Loss of Defenses Due to Untimely or Incomplete Answer | 10314. Initiation of Proceedings | The order of this rule has been reversed, and |

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| <p>Untimely or Incomplete Answer</p> | <p>(a) If a party fails to 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 13801.</p> <p>(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.</p> | <p>(b) Answer – Defenses, Counterclaims, and/or Cross-Claims</p> <p>(2)(A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial to a pleading that states specific facts and contentions may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.</p> <p>(B) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to specify all available defenses and relevant facts in such party's answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party's Answer at the hearing.</p> <p>C) A Respondent, Responding</p> | <p>current paragraphs (2)(A) and (B) have been condensed into one.</p> |

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| | | <p>Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing. Such a party may also be subject to default procedures as provided in paragraph (e) below.</p> | |
| <p>Amending Pleadings</p> | <p>13309. Amending Pleadings</p> <p>(a) Before Panel Appointment</p> <p>(E) Except as provided in paragraph (c), a party may amend a pleading at any time before the panel has been appointed.</p> <p>claim that has been filed but not yet served by the Director, the claimant must file the amended claim with the Director, with</p> | <p>10328. Amendments</p> <p>(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the</p> | <p>[Paragraph (c) of the rule.] Under the current Code, parties may amend pleadings at any time prior to panel appointment, but, after panel appointment, they must obtain approval to amend a pleading. This means that between the time that the Director consolidates the arbitrator lists and the panel is appointed, a party could</p> |

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| | <p>additional copies for each arbitrator and each other party. The Director will then serve the amended claim in accordance with Rules <u>13300</u> and <u>13301</u>.</p> <p>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.</p> <p>(b) After Panel Appointment</p> <p>One party only has been added if a party only has been added, if the panel grants a motion to amend in accordance with Rule 13503. 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</p> | <p>provisions set forth in Rule 10314(b). . . .</p> <p>(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.</p> | <p>amend a pleading to add a party to the proceeding, and the newly-added party would neither be able to participate in NLSS or object to being added to the arbitration. To address this issue, which has been the subject of concern among some users of the forum, the rules governing amending pleadings (Rule 13309) and the application of NLSS to newly added parties (13407) have been amended to provide that no party may be added by amendment after ranked lists are due to the Director and before a panel is appointed and approves a request to add the party. Rule 13309(c) also makes clear that the party to be added after panel appointment must be given an opportunity to be heard before the panel can grant the motion to amend. This change will</p> |

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| | <p>Director, or the panel, unless the panel determines otherwise.</p> <p>(c) Amendments to Add Parties</p> <p>Under the Current Arbitration Rules Under the Code, 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 13503 without waiving any rights or objections under the Code.</p> <p>(d) Responding to an Amended Pleading</p> <p><u>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.</u></p> | | <p>ensure that a party added to an arbitration by amendment either will be able to participate in NLSS, or will be able to object to being added. (Rule 13407 also clarifies that parties added prior to the cut-off date may participate in NLSS, but parties added by amendment after panel appointment do not have the ability to rank and strike arbitrators under NLSS. However, they may challenge an arbitrator for cause under Rule 13410.)</p> <p><u>NASD is amending Rule 13309(a)(1) to clarify that the service requirements of Rule 13300 also apply to this rule.</u></p> <p><u>NASD did not intend to change current practice in the Code. The current rules governing answering counterclaims, cross claims, and amended</u></p> |

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| | | | <p><u>claims do not prohibit a party from responding to any amended pleadings; however, these rules do not specifically permit the practice. Thus, NASD is amending Rule 13309 to clarify that any party has a right to file a response to any amended pleading within 20 days of receipt of the amended pleading, unless the panel determines otherwise.</u></p> |
| <p>Answering Amended Claims</p> | <p>13310. Answering Amended Claims</p> <p>(a) If a claim is amended before it has been answered, the respondent's original time to answer is extended by 20 days.</p> <p>(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.</p> <p>(c) If a claim is amended after a panel has been appointed, the respondent has 20 days from the time</p> | <p>10328. Amendments</p> <p>(a) . . . The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 10314(b).</p> | <p>As part of the initiative to standardize time limits in the Code, the time to answer an amended pleading has been extended from 10 business <u>days</u> to 20 calendar days.</p> |

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| | <p>the respondent receives notice that the panel has granted the motion to amend the claim to serve an amended answer.</p> <p>(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.</p> <p>(e) If the amended claim adds a new party to the arbitration, the new party's answer is governed by Rule 13306.</p> | | |
| Amendments to Amount in Dispute | <p>13311. Amendments to Amount in Dispute</p> <p>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.</p> | <p>10328. Amendments</p> <p>(b) If a new or amended pleading increases the amount in dispute, all filing fees, hearing session deposits, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.</p> | No substantive change. |
| Multiple Claimants | <p>13312. Multiple Claimants</p> <p>(a) One or more parties may join</p> | <p>10314. Initiation of Proceedings</p> | The provisions relating to joinder and consolidation of multiple parties have |

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| | <p>multiple claims together <u>in the same arbitration</u> if the claims contain common questions of law or fact and:</p> <ul style="list-style-type: none"> • 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. <p>(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. <u>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.</u></p> | <p>(d) Joinder and Consolidation Multiple Parties</p> <p>(1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them, jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief,</p> | <p>been broken into three rules. (See Rules 13312, 13313 and 13314). Legal terminology has been replaced by shorter, more common phrases. The provisions relating to defenses and awards have been deleted, because NASD believes that they are not necessary, may provide incomplete guidance depending on applicable law, and are more confusing than helpful.</p> <p><u>NASD is amending Rule 13312(a) to make the language consistent with the language in Rule 13313(a).</u></p> <p><u>In the rare instance in which the Director severs claims, NASD believes the rules should be amended to codify current practice. Because there are multiple surviving panels when the Director severs claims, there</u></p> |

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| | | <p>and against one or more respondents according to their respective liabilities.</p> <p>(2) In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.</p> | <p><u>would be two or more panels reviewing the Director's decision, with potentially conflicting results. To avoid inconsistent results and to expedite the arbitration process, NASD currently forwards any motion to rejoin severed claims to the panel on the lowest numbered case (i.e., the panel from the first-filed claim in the matter that was severed) to decide a motion to re-join the claims. Thus, NASD is amending Rules 13312(b) and 13313(b) to reflect current practice concerning severing claims in the forum.</u></p> |
| <p>Multiple Respondents</p> | <p>13313. Multiple Respondents</p> <p>(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:</p> <ul style="list-style-type: none"> • The claims are asserted against the respondents | <p>10314. Initiation of Proceedings</p> <p>(d) Joinder and Consolidation Multiple Parties</p> <p>(1) Permissive Joinder. All persons may join in one action as claimants if they assert any</p> | <p>See comment section to Rule 13312.</p> |

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| | <p>jointly and severally; or</p> <ul style="list-style-type: none"> • The claims arise out of the same transaction or occurrence, or series of transactions or occurrences. <p>(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. <u>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.</u></p> | <p>right to relief jointly, severally, or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them, jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.</p> <p>(2) In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the</p> | |

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| | | <p>Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.</p> | |
| <p>Combining Claims</p> | <p>13314. Combining Claims</p> <p>Before ranked arbitrator lists are due to the Director under Rule 13404(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.</p> | <p>10314. Initiation of Proceedings</p> <p>(d) Joinder and Consolidation Multiple Parties</p> <p>(3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.</p> <p>(4) Further determinations with respect to joinder, consolidation, and multiple parties under this paragraph (d) shall be made by the arbitration panel and shall be deemed final.</p> | <p>See comment section to Rule 13312. The rule provides more guidance regarding the time frame for consolidating claims.</p> |

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| PART IV APPOINTMENT, DISQUALIFICA- TION AND AUTHORITY OF ARBITRATORS | | | |
| Neutral List Selection System and Arbitrator Rosters | <p>13400. Neutral List Selection System and Arbitrator Rosters</p> <p>(a) Neutral List Selection System</p> <p>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.</p> <p>(b) Arbitrator [s] Rosters</p> <p>NASD maintains the following roster of arbitrators:</p> <ul style="list-style-type: none"> • A roster of non-public arbitrators as defined in Rule | <p>10308. Selection of Arbitrators</p> <p>(a) Definitions</p> <p>(3) "Neutral List Selection System"</p> <p>The term "Neutral List Selection System" means the software that maintains the roster of arbitrators and performs various functions relating to the selection of arbitrators.</p> | <p>To make rules shorter and easier to read, the substance of current Rule 10308 has been broken into several rules. See Rules 13400-13409.</p> <p>The definitions in current Rule 10308(a) have been moved to Rule 13100.</p> <p>This rule and the rules that follow include a series of changes to the NLSS system. Those changes include:</p> <ul style="list-style-type: none"> • Shifting to a random (as opposed to the current rotational) system of generating arbitrator names for the lists sent to parties (Rule 13400(a)) (approved by the SEC on March 9, 2005); |

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| | <p>13100[(n)] <u>(p)</u>;</p> <ul style="list-style-type: none"> • A roster of public arbitrators as defined in Rule 13100[(r)] <u>(u)</u>; and • A roster of arbitrators who are eligible to serve as chairperson of a panel as described in paragraph (c). <u>Arbitrators who are eligible to serve as chairperson will also be included in the roster of non-public or public arbitrators, depending on composition of the panel under Rule 13402, but will only appear on one list in a case.</u> <p>(c) Eligibility for Chairperson Roster</p> <p>Arbitrators are eligible to serve as chairperson of panels submitted for arbitration under the Code if they have completed chairperson training provided by NASD or have substantially equivalent training or experience and:</p> <ul style="list-style-type: none"> • Have a law degree and are a | | <ul style="list-style-type: none"> • Creating of a separate list of public chair-qualified arbitrators from which the chairperson of the panel will be selected (Rules 13400(b) and (c)). (For purposes of Rule 13400(c), “substantially equivalent training or experience” includes service as a judge or administrative hearing officer, chairperson training offered by another recognized dispute resolution forum, or the like) (currently proposed); • Eliminating the ability of parties to unilaterally request arbitrators with particular expertise (see current Rule 10308(b)(4)(B)) (currently proposed); and • Expanding of the number of names of proposed arbitrators provided to the parties, but limiting the number of arbitrators from each list that each party may strike (Rule 13403) |

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| | <p>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</p> <ul style="list-style-type: none"> • Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held. | | <p>(currently proposed).</p> <p>NASD believes that these modifications to NLSS will streamline and simplify the arbitrator selection process, and that the creation of a chairperson list will enhance the quality of NASD arbitrations. In addition, the proposed changes will make the NLSS component of NASD's proposed new computerized case management system, CMS/MATRICS simpler and less expensive to program and implement.</p> <p><u>NASD is amending Rule 13400(b) to clarify that chair-qualified arbitrators will be included in the public arbitrator pool as well as in the public chair pool. NASD notes that this proposed change will not result in duplication of names on the chair and public lists for the same case as the rule filing suggests. The NLSS will be programmed to select the arbitrators such that a specific</u></p> |

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| | | | <p><u>arbitrator's name will not appear on both lists in the same case. NASD is also amending the title of Rule 13400(b) to correct a typographical error.</u></p> |
| <p>Number of Arbitrators</p> | <p>13401. Number of Arbitrators</p> <p>(a) Claims of \$25,000 or Less</p> <p>of 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 13800.</p> <p>(b) Claims of More Than \$25,000 up to \$50,000</p> <p>If the amount of a claim is more than \$25,000 but no 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.</p> <p>(c) Claims of More Than \$50,000; Unspecified or Non-Monetary Claims</p> | <p>10308. Selection of Arbitrators</p> <p>(b)(1) Composition of Arbitration Panel</p> <p>(A) Claims of \$50,000 or Less</p> <p>If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration panel composed of one public arbitrator, unless the parties agree to the appointment of a non-public arbitrator.</p> <p>(i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different</p> | <p>Under the rule:</p> <ul style="list-style-type: none"> • For claims under \$25,000, the single arbitrator could no longer request a three-arbitrator panel; and • For claims involving between \$25,000 and \$50,000, any party could still request a three-arbitrator panel, but the single arbitrator could not. <p>(In a related change, Rule 13402(a) provides that a single arbitrator must be from the chairperson roster unless the parties agree otherwise.)</p> <p>NASD believes that these changes will help to streamline the administration of smaller claims, and minimize the cost of bringing and prosecuting small claims. NASD believes</p> |

If the amount of a claim is more

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| | <p>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.</p> | <p>panel composition.</p> <p>(ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.</p> <p>(B) Claims of More Than \$50,000</p> <p>If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.</p> | <p>that requiring that single arbitrators be chair-qualified will help ensure the quality of single arbitrator proceedings.</p> |
| <p>Composition of Arbitration Panels in Cases Not Involving a</p> | <p>13402. Composition of Arbitration Panels in Cases Not Involving a Statutory Discrimination Claim</p> | <p>10308. Selection of Arbitrators</p> <p>(b)(1) Composition of</p> | <p>As part of the proposed changes to NLSS, the rule provides that in single arbitrator cases, the single</p> |

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| Statutory Discrimination Claim | <p><i>For disputes involving statutory employment discrimination claims, see Rule 13802.</i></p> <p>(a) Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions</p> <ul style="list-style-type: none"> • If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the <u>non-public</u> chairperson roster described in Rule 13400(c), unless the parties agree in writing otherwise. • If the panel consists of three arbitrators, all will be non-public arbitrators. One of the arbitrators will be selected from the <u>non-public</u> chairperson roster described in Rule 13400(c), unless the parties agree in writing otherwise. <p>(b) Other Disputes Between or</p> | <p>Arbitration Panel</p> <p>(A) Claims of \$50,000 or Less</p> <p>If the amount of a claim is \$50,000 or less, the Director shall appoint an arbitration panel composed of one public arbitrator, unless the parties agree to the appointment of a non-public arbitrator.</p> <p>(i) If the amount of a claim is \$25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.</p> <p>(ii) If the amount of a claim is greater than \$25,000 and not more than \$50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public</p> | <p>arbitrator will be selected from the new chair-qualified roster, unless the parties agree otherwise. See Rule 13400(b) and (c). The rule also provides that in three-arbitrator cases, one arbitrator will be selected from the chair-qualified roster.</p> <p><u>NASD is amending Rule 13402 to add the word “public” to describe the chairperson roster, so that there will be no confusion concerning the composition of the panels under the Code.</u></p> |

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| | <p>Among Members and Associated Persons</p> <ul style="list-style-type: none"> • If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule [13400(c)] <u>12400(c) of the Code of Arbitration Procedure for Customer Disputes</u>, unless the parties agree in writing otherwise. • If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators. One of the public arbitrators will be selected from the chairperson roster described in Rule [13400(c)] <u>12400(c) of the Code of Arbitration Procedure for Customer Disputes</u>, unless the parties agree in writing otherwise. | <p>arbitrators, unless the parties agree to a different panel composition.</p> <p>(B) Claims of More Than \$50,000</p> <p>If the amount of a claim is more than \$50,000, the Director shall appoint an arbitration panel composed of one non-public arbitrator and two public arbitrators, unless the parties agree to a different panel composition.</p> | |
| <p>Generating and Sending Lists to the Parties</p> | <p>13403. Generating and Sending Lists to the Parties</p> <p><i>For disputes involving statutory employment discrimination claims,</i></p> | <p>10308. Selection of Arbitrators</p> <p>(b)(2) One List for Panel of One Arbitrator</p> | <p>As part of the proposed changes to NLSS, the rule provides that when the panel consists of three arbitrators, parties would receive a</p> |

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| | <p><i>see Rule 13802.</i></p> <p>(a) Disputes Between or Among Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions</p> <p>(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of [seven] <u>eight</u> non-public arbitrators from the NASD's <u>non-public</u> chairperson roster.</p> <p>(2) If the panel consists of three non-public arbitrators, the Neutral List Selection System will generate:</p> <ul style="list-style-type: none"> • A list of [14] <u>16</u> arbitrators from the NASD's non-public roster; and • A list of [seven] <u>eight</u> non-public arbitrators from the NASD's <u>non-public</u> chairperson roster. <p>(3) If the panel consists of three arbitrators, the Neutral List</p> | <p>If one arbitrator will serve as the arbitration panel, the Director shall send to the parties one list of public arbitrators, unless the parties agree otherwise.</p> <p>(3) Two Lists for Panel of Three Arbitrators</p> <p>If three arbitrators will serve as the arbitration panel, the Director shall send two lists to the parties, one with the names of public arbitrators and one with the names of non-public arbitrators. The lists shall contain numbers of public and non-public arbitrators, in a ratio of approximately two to one, respectively, to the extent possible, based on the roster of available arbitrators.</p> <p>(4) Preparation of Lists</p> <p>(A) Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the lists of public and non-public arbitrators on a rotating basis within a</p> | <p>chairperson list as well as non-public and public lists, as applicable, and that each list would contain [seven] <u>eight</u> names.</p> <p>As part of the proposed changes to NLSS, the ability of a party to unilaterally request arbitrators with certain expertise in current Rule 10308(b)(4)(B) has been eliminated.</p> <p>Like the current rule, the proposed rule states that NLSS excludes arbitrators from the lists sent to parties based on current conflicts of interest identified by NLSS. NLSS currently checks for conflicts based on matches between arbitrator and party identification numbers and the member conflicts database maintained by NASD. This is a preliminary check that is intended to remove arbitrators from the list who have an obvious conflict with a party based on employment history or other information contained</p> |

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| | <p><u>Selection System will generate the non-public chairperson list first. Chair-qualified arbitrators who were not selected for the non-public chairperson list will be eligible for selection on the non-public list. An individual arbitrator cannot appear on both the non-public chairperson list and the non-public list for the same case.</u></p> <p>(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.</p> <p>(b) Other Disputes Between or Among Members and Associated Persons</p> <p>(b) If the Neutral List Selection System will generate a list of [seven] eight public arbitrators from NASD's public chairperson roster.</p> <p>(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:</p> | <p>designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest identified within the Neutral List Selection System database.</p> <p>(B) If a party requests that the lists include arbitrators with expertise classified in the Neutral List Selection System, the lists may include some arbitrators having the designated expertise.</p> <p>(5) Sending of Lists to Parties</p> <p>The Director shall send the lists of arbitrators to all parties at the same time approximately 30 days after the last answer is due.</p> <p>(6) Information About Arbitrators</p> <p>The Director shall send to the parties employment history for each listed arbitrator for the past 10 years and other background information. If a party requests additional information about an arbitrator, the Director shall send such</p> | <p>in the database. It does not, nor is it intended to, replace the more detailed check performed by parties once the lists have been sent.</p> <p><u>NASD is amending Rule 13403 to increase the number of arbitrators on each list to eight, and to reduce the number of strikes per each separately represented party to four. By increasing the panel size and reducing the number of strikes, there is a greater likelihood that arbitrators from the original list will remain on the list after the parties exercise their strikes and all lists are consolidated. This change will not eliminate the possibility of computer-generated extended lists, but should reduce the instances of extended lists, thus providing parties with more control in the arbitrator selection process.</u></p> <p><u>NASD is also proposing to amend Proposed Rule 13403 to clarify that those arbitrators who are eligible to serve as</u></p> |

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| | <p>(c) Sending Lists to Parties</p> <p>(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.</p> <p>(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 13404(c).</p> | | |
| <p>Striking and Ranking Arbitrators</p> | <p>13404. Striking and Ranking Arbitrators</p> <p>(a) Except for lists generated pursuant to Rule 13403(a)(2), [E]ach separately represented party may strike up to [five] <u>four</u> of the arbitrators from each list for any reason by</p> | <p>10308. Selection of Arbitrators</p> <p>(c) Striking, Ranking, and Appointing Arbitrators on Lists</p> <p>(1) Striking and Ranking</p> | <p>As part of the proposed changes to NLSS, the rule provides that parties would have five strikes, and would have to leave two names on the lists. This change is intended to avoid the possibility that all names will</p> |

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| | <p>crossing through the names of the arbitrators. [Two] <u>At least four</u> names must remain on each list.</p> <p>(b) For lists generated pursuant to Rule 13403(a)(2), each separately represented party may strike up to eight of the arbitrators from the non-public list and up to four of the arbitrators from the non-public chairperson list for any reason by crossing through the names of the arbitrators. At least eight names must remain on the non-public list and at least four names must remain on the non-public chairperson list.</p> <p>(c) 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.</p> <p>(d) The ranked lists must be (a) (b) filed 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</p> | <p>Arbitrators</p> <p>(A) Striking An Arbitrator A party may strike one or more of the arbitrators from each list for any reason.</p> <p>(B) Ranking - Panel of One Arbitrator Each party shall rank all of the arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on.</p> <p>(C) Ranking - Panel of Three Arbitrators Each party shall rank all of the public arbitrators remaining on the list by assigning each arbitrator a different, sequential, numerical ranking, with a "1" rank indicating the party's first choice, a "2" indicating the party's second choice, and so on. Each party separately shall</p> | <p>be stricken from the lists, which is intended to minimize the likelihood that the Director will have to appoint an arbitrator not on the original lists sent to parties. (See Rule 13406.)</p> <p><u>See comments under Rule 13403 concerning striking and ranking arbitrators.</u></p> |

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| | <p>Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators.</p> | <p>rank all of the non-public arbitrators remaining on the list, using the same procedure.</p> <p>(2) Period for Ranking Arbitrators; Failure to Timely Strike and Rank</p> <p>A party must return to the Director the list or lists with the rankings not later than 20 days after the Director sent the lists to the parties, unless the Director has extended the period. If a party does not timely return the list or lists, the Director shall treat the party as having retained all the arbitrators on the list or lists and as having no preferences.</p> | |
| <p>Combining Lists</p> | <p>13405. Combining Lists</p> <p>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:</p> <ul style="list-style-type: none"> • The Director will add the rankings of all claimants | <p>10308. Selection of Arbitrators</p> <p>(c) Striking, Ranking, and Appointing Arbitrators on Lists</p> <p>(3) Process of Consolidating Parties' Rankings</p> <p>The Director shall prepare one or two consolidated lists of</p> | <p>As part of the proposed changes to NLSS, the rule includes combining of the chairperson list. Otherwise, the process for combining lists remains the same.</p> |

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| | <p>together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.</p> <ul style="list-style-type: none"> • 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. | <p>arbitrators, as appropriate under paragraph (b)(2) or (b)(3), based upon the parties' numerical rankings. The arbitrators shall be ranked by adding the rankings of all claimants together and all respondents together, including third-party respondents, to produce separate consolidated rankings of the claimants and the respondents. The Director shall then rank the arbitrators by adding the consolidated rankings of the claimants, the respondents, including third-party respondents, and any other party together, to produce a single consolidated ranking number, excluding arbitrators who were stricken by any party.</p> | |
| <p>Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List</p> | <p>13406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List</p> <p><i>For disputes involving statutory employment discrimination claims, see Rule 13802.</i></p> <p>(a) Disputes Between Members, or Employment Disputes Between</p> | <p>10308. Selection of Arbitrators</p> <p>(c) Striking, Ranking, and Appointing Arbitrators on Lists</p> <p>(4) Appointment of Arbitrators</p> | <p>As part of the proposed changes to NLSS, the rule incorporates a chairperson list, and current Rule 10308(c)(5), governing selection of chairperson, has been deleted.</p> <p>In the past, there have been questions regarding when appointment of arbitrators</p> |

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| | <p>or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions</p> <p>(1) If the panel consists of one arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined non-public chairperson list.</p> <p>(2) If the panel consists of three arbitrators, the Director will appoint a three-arbitrator panel consisting of:</p> <ul style="list-style-type: none"> • The two highest-ranked available arbitrators from the combined non-public arbitrator list; and • The highest-ranked available arbitrator from the combined non-public chairperson list, who will serve as chairperson of the panel. <p>(b) Other Disputes Between or Among Members and Associated Persons</p> | <p>(A) Appointment of Listed Arbitrators</p> <p>The Director shall appoint arbitrators to serve on the arbitration panel based on the order of rankings on the consolidated list or lists, subject to availability and disqualification.</p> <p>(B) Discretion to Appoint Arbitrators Not on List</p> <p>If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director shall appoint one or more arbitrators to complete the arbitration panel. Unless the parties agree otherwise, the Director may not appoint a non-public arbitrator under paragraphs (a)(4)(B) or (a)(4)(C). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).</p> <p>(5) Selecting a Chairperson for the Panel</p> | <p>occurs. To address this question, paragraph (d) of the rule clarifies that appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. In addition, the arbitrator oath currently in Rule 10327 has been moved here.</p> |

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| | <p>arbitrator, the Director will appoint the highest-ranked available arbitrator from the combined public chairperson list.</p> <p>(2) If the panel consists of three arbitrators, the Director will appoint a three-arbitrator panel consisting of:</p> <ul style="list-style-type: none"> • The highest-ranked available arbitrator from the combined non-public arbitrator list; • The highest-ranked available arbitrator from the combined public arbitrator list; and • The highest-ranked available arbitrator from the combined public chairperson list, who will serve as chairperson of the panel. <p>(c) If the number of arbitrators available to serve from the combined list(s) is not sufficient to fill an initial</p> | <p>The parties shall have 7 seven days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties cannot agree, the Director shall appoint a chairperson from the panel as follows:</p> <p>(A) The Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties as long as the person is not an attorney, accountant, or other professional who has devoted 50% or more of his or her professional or business activities, within the last two years, to representing or advising public customers in matters relating to disputed securities or commodities transactions or similar matters.</p> <p>(B) If the most highly ranked public arbitrator is subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the other public arbitrator, as long as the person also is not subject to the exclusion set</p> | |

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| | <p>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 13100[(n)] (p)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in Rule 13403 and the parties will have the right to challenge the arbitrators as provided in Rule 13410.</p> <p>(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.</p> | <p>forth in subparagraph (A). (C) If both public arbitrators are subject to the exclusion set forth in subparagraph (A), the Director shall appoint as the chairperson the public arbitrator who is the most highly ranked by the parties.</p> | |
| Additional Parties | <p>13407. Additional Parties</p> <p>(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</p> | <p>10308. Selection of Arbitrators</p> <p>(c) Striking, Ranking, and Appointing Arbitrators on Lists</p> | <p>Paragraph (b) of the rule is new. In the current Code, parties may amend pleadings at any time prior to panel appointment, but, after panel appointment, they must obtain</p> |

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| | <p>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 13404. 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 13405. 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.</p> <p>(b) Once the ranked lists are due to the Director under Rule 13404, 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 13503 without waiving any</p> | <p>(6) Additional Parties</p> <p>If a party is added to an arbitration proceeding before the Director has consolidated the other parties' rankings, the Director shall send to that party the list or lists of arbitrators and permit the party to strike and rank the arbitrators. The party must return to the Director the list or lists with numerical rankings not later than 20 days after the Director sent the lists to the party. The Director shall then consolidate the rankings as specified in this paragraph (c).</p> | <p>approval to amend a pleading. This means that between the time that the Director consolidates the arbitrator lists and the panel is appointed, a party could amend a pleading to add a party to the proceeding, and the newly-added party would neither be able to participate in NLSS nor object to being added to the arbitration. To address this issue, which has been the subject of concern among some users of the forum, the rules governing amending pleadings (Rule 13309) and the application of NLSS to newly added parties (Rule 13407) provide that no party may be added by amendment after ranked lists are due to the Director and before a panel is appointed and approves a request to add the party.</p> <p>Rule 13309(c) also makes clear that the party to be added after panel appointment must be given an opportunity to be heard before the panel</p> |

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| | 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 13410. | | <p>can grant the motion to amend. This change will ensure that a party added to an arbitration by amendment either will be able to participate in NLSS, or will be able to object to being added.</p> <p>Rule 13407 also clarifies that parties added prior to the cut-off date may participate in NLSS, but parties added by amendment after panel appointment do not have the ability to rank and strike arbitrators under NLSS. However, they may challenge an arbitrator for cause under Rule 13410.</p> |
| Disclosures Required of Arbitrators | <p>13408. Disclosures Required of Arbitrators</p> <p>(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</p> | <p>10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify</p> <p>(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:</p> | The relevant portion of IM-10308, which was approved by the SEC on March 7, 2005, has been added as Rule 13408(a)(4). Otherwise, there are no substantive changes from current Rule 10312. |

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| | <p>objective and impartial determination in the proceeding, including:</p> <p>(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;</p> <p>(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;</p> <p>(3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates; and</p> <p>as a mediator.</p> <p>(4) Any existing or past service</p> <p>(b) The obligation to disclose interests, relationships, or circumstances that might preclude an</p> | <p>(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;</p> <p>(2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators must disclose any such relationships or circumstances that they have with any party or its counsel, or with any individual whom they have been told will be a witness. They must also disclose any such relationship or circumstances involving members of their families or their current employers, partners, or business associates.</p> <p>(b) Persons who are requested to accept appointment as arbitrators must make a reasonable effort to inform</p> | |

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| | <p>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.</p> <p>(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.</p> | <p>themselves of any interests, relationships or circumstances described in paragraph (a) above.</p> <p>(c) 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 a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.</p> <p style="text-align: center;">* * *</p> <p>(e) The Director shall inform the parties to an arbitration proceeding of any information disclosed to the Director under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances</p> | |

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| | | <p>described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.</p> <p style="text-align: center;">* * *</p> <p>IM-10308. Arbitrators Who Also Serve as Mediators</p> <p style="text-align: center;">* * *</p> <p>Arbitrators who also serve as mediators shall disclose that fact on their arbitrator disclosure forms.</p> | |
| <p>Arbitrator Recusal</p> | <p>13409. Arbitrator Recusal</p> <p>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.</p> | | <p>New rule.</p> <p>The rule provides guidance to parties on how recusal requests may be made, and decided. The rule provides that, consistent with current case law, the subject of the request for recusal must decide the request.</p> |
| <p>Removal of Arbitrator by Director</p> | <p>13410. Removal of Arbitrator by Director</p> <p>(a) Before First Hearing Session</p> | <p>10308. Selection of Arbitrators</p> <p>(d) Disqualification and</p> | <p>No substantive change. The rule combines the substance of current Rules 10308(d), 10312(d), and 10313, which all</p> |

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| | <p>Begins</p> <p>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.</p> <p>(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.</p> <p>(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.</p> | <p>Removal of Arbitrator Due to Conflict of Interest or Bias</p> <p>(1) Disqualification By Director</p> <p>After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice.</p> <p>(2) Removal by Director</p> <p>After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator from an</p> | <p>address disqualification and removal of arbitrators.</p> |

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| | <p>(b) After First Hearing Session Begins</p> <p>After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 13408 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).</p> | <p>arbitration panel based on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed.</p> <p>(3) Standards for Deciding Challenges for Cause</p> <p>The Director will grant a party's request to disqualify 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 an 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.</p> <p style="text-align: center;">* * *</p> <p>(f) Challenges by Customers In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer.</p> | |

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| | | <p style="text-align: center;">* * *</p> <p>10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify</p> <p>(d) Removal by Director</p> <p>(1) The Director may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.</p> <p>(2) After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information not known to the parties when the arbitrator was selected. The Director's authority under this subparagraph (2) may be exercised only by the Director or the President of NASD Dispute Resolution.</p> <p>(3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is</p> | |

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| | | <p>biased, lacks impartiality, or has an 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.</p> | |
| <p>Replacement of Arbitrators</p> | <p>13411. Replacement of Arbitrators</p> <p>(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.</p> <p>(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.</p> <p>(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</p> | <p>10308. Selection of Arbitrators</p> <p>(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias</p> <p>(4) Vacancies Created by Disqualification or Resignation</p> <p>Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining</p> | <p>Under the current Code, the provisions regarding replacement of arbitrators are contained in several different sections, and contain numerous cross-references to other rules. The rule consolidates the various current rules, but contains no substantive change, other than extending the option of electing to proceed with only the remaining arbitrators to all stages of the proceeding, but eliminating the five-day limitation on electing that option, both of which are contained in current Rule 10313.</p> <p>NASD believes that parties should have the right to jointly decide to proceed with only the remaining arbitrators</p> |

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| | <p>Selection System. The Director will provide the parties information about the arbitrator as provided in Rule 13403, and the parties shall have the right to object to the arbitrator as provided in Rule 13410.</p> <p>(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 13100(n)(2) or (3), unless the parties agree otherwise.</p> | <p>on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).</p> <p style="text-align: center;">* * *</p> <p>(c) Striking, Ranking, and Appointing Arbitrators on Lists</p> <p>(4) Appointment of Arbitrators</p> <p>(B) Discretion to Appoint Arbitrators Not on List</p> <p>If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director shall appoint one or more arbitrators to complete the arbitration</p> | <p>regardless of when the replacement occurs, and that the parties should be able to elect that option up until the time the appointment of the replacement arbitrator occurs.</p> |

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| | | <p>panel. Unless the parties agree otherwise, the Director may not appoint a non-public arbitrator under paragraphs (a)(4)(B) or (a)(4)(C). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).</p> <p style="text-align: center;">* * *</p> <p>10308. Selection of Arbitrators</p> <p>(a) Definitions</p> <p>(4) "non-public arbitrator"</p> <p>The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:</p> <p>(A) is, or within the past three years, was:</p> <p>(i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);</p> <p>(ii) registered under the</p> | |

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| | | <p>Commodity Exchange Act;</p> <p>(iii) a member of a commodities exchange or a registered futures association; or</p> <p>(iv) associated with a person or firm registered under the Commodity Exchange Act;</p> <p>(B) is retired from engaging in any of the business activities listed in subparagraph (4)(A);</p> <p>(C) 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 subparagraph (4)(A); or</p> <p>(D) 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</p> | |

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| | | <p>in such activities.</p> <p style="text-align: center;">* * *</p> <p>10313. Disqualification or Other Disability of Arbitrators</p> <p>(a) In the event that any arbitrator, after the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the Director shall appoint a replacement arbitrator to fill the vacancy and the hearing shall continue. In the alternative, if all parties agree to proceed with any remaining arbitrator(s), they shall inform the Director in writing within 5 business days of notification of the vacancy, and the remaining arbitrator(s) shall continue with the hearing and determination of the controversy.</p> | |

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| | | <p>(b) The Director shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director concerning the replacement arbitrator's background. If the arbitration proceeding is subject to Rule 10308, the party may exercise his or her right to challenge the replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the name of the arbitrator challenged and the basis for such challenge. If the arbitration proceeding is not subject to Rule 10308, within the time remaining prior to the next scheduled hearing session or the 10 day period provided under Rule 10311, whichever is shorter, a party may exercise the party's right to challenge the replacement arbitrator as provided in Rule 10311.</p> | |

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| Director's Discretionary Authority | <p>13412. Director's Discretionary Authority</p> <p>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.</p> | <p>10308. Selection of Arbitrators</p> <p>(e) Discretionary Authority</p> <p>The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and the Rule 10000 Series to facilitate the appointment of arbitration panels and the resolution of arbitration disputes.</p> | No substantive change. |
| Jurisdiction of Panel and Authority to Interpret the Code | <p>13413. Jurisdiction of Panel and Authority to Interpret the Code</p> <p>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.</p> | <p>10324. Interpretation of Provisions of Code and Enforcement of Arbitrator Rulings</p> <p>The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.</p> | No substantive change. |

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| Determinations of Arbitration Panel | 13414. 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. | 10325. Determination of Arbitrators All rulings and determinations of the panel shall be by a majority of the arbitrators. | The rule reflects that under the Code, and applicable law, some decisions may be made by a single member of a three-arbitrator panel. E.g., Rule 13503 provides that some motions may be decided by a single arbitrator. Also, applicable law may permit a single arbitrator to issue a subpoena. (See Rule 13512.) |

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| PART V PREHEARING PROCEDURES AND DISCOVERY | | | |
| Initial Prehearing Conference | <p>13500. Initial Prehearing Conference</p> <p>(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.</p> <p>(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.</p> <p>(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</p> | | <p>New rule; codifies current practice.</p> <p>The rule would codify NASD's current practice of scheduling an initial pre-hearing conference in every case unless the parties provide certain scheduling and other information. The practice streamlines and expedites the administration of arbitrations. The rule will provide guidance to parties regarding NASD procedure.</p> |

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| | <p>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:</p> <ul style="list-style-type: none"> • 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 | | |

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| | reply briefs. | | |
| Other Prehearing Conferences | <p>13501. Other Prehearing Conferences</p> <p>(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.</p> <p>(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:</p> <ul style="list-style-type: none"> • Discovery disputes; • Motions; • Witness lists and subpoenas; • Stipulations of fact; • Unresolved scheduling issues; • Contested issues on which the parties will submit | <p>10321. General Provisions Governing Pre-Hearing Proceedings</p> <p>(d) Pre-Hearing Conference</p> <p>(1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issue which relates to the pre-hearing process or to the hearing, including but not limited to exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of</p> | <p>No substantive change.</p> <p><u>Rule 13501 does not grant the Director the explicit authority to hold an IPHC before the panel is selected. On rare occasions, parties may need to request a prehearing conference before the panel is appointed to resolve discovery disputes at an earlier stage in the arbitration process or to discuss jurisdictional issues. Thus, NASD is amending Rule 13501 to reinstate similar language from the current code.</u></p> |

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| | <p>briefs; and</p> <ul style="list-style-type: none"> • Any other matter that will simplify or expedite the arbitration. <p>(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 13503, prehearing conferences may be held before a single arbitrator, generally the chairperson.</p> | <p>hearing documents, stipulation of facts, identification and briefing of contested issues, and any other matters which will expedite the arbitration proceedings.</p> <p>(2) Any issues raised at the pre-hearing conference that are not resolved may be referred to a single member of the arbitration panel for decision.</p> | |
| <p>Recording Prehearing Conferences</p> | <p>13502. Recording Prehearing Conferences</p> <p>(a) Except as provided in Rule 13504, prehearing conferences will not be tape-recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party.</p> <p>(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.</p> | | <p>New rule. The rule will provide guidance to parties and arbitrators regarding when and under what circumstances prehearing conferences are recorded.</p> |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| <p>Motions</p> | <p>13503. Motions</p> <p>(a) Motions</p> <p>(1) A party may make motions in a 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.</p> <p>(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.</p> | | <p>New rule. Although the current Code does not address motions, parties are using motions in arbitration with increasing frequency. The lack of guidance in the Code regarding how and when motions may be made, the time for responding to motions, and who decides motions, has created confusion among parties and arbitrators. The rule would provide guidance to parties and arbitrators, and to help to establish procedural uniformity in the forum.</p> <p>Paragraph (a)(2) makes clear that written motions do not need to be formal or take any specific form, but may simply be letters, or any other form the panel decides is acceptable.</p> |

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| | <p>13504, written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise.</p> <p>(3) Except as provided by Rule 13309, written motions to amend a pleading after panel appointment pursuant to Rule 13309(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 Rule 13309(c) without waiving any rights or objections under the Code.</p> <p>(b) Responding to Motions</p> <p>Except as provided by Rule 13504, parties have 10 days from the receipt of a written motion to</p> | | |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <p>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.</p> <p>(c) Authority to Decide Motions</p> <p>(1) The Director decides the forum under Rule 13203 and removal of an arbitrator under Rule 13410.</p> <p>(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.</p> <p>(3) Discovery-related motions are decided by one arbitrator.</p> | | |

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| | <p>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.</p> <p>(c) Motions for Rule 13109 are decided by the arbitrator who is the subject of the request.</p> <p>(d) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 13206, or to decide a claim or arbitration before a hearing under Rule 13504, unless the Code provides or the parties agree otherwise.</p> | | |
| <p>Motions to Decide Claims Before a Hearing on the Merits</p> | <p>13504. Motions to Decide Claims Before a Hearing on the Merits</p> <p>(a) Except as provided in Rule 13206, motions to decide a claim before a hearing are discouraged and may only be granted in extraordinary circumstances.</p> <p>(b) Motions under this rule must be</p> | | <p>New rule.</p> <p>Currently, the Code does not address the authority of the panel to decide dispositive motions before a hearing on the merits. Consequently, arbitrator decisions with respect to it lack uniformity, and the issue of arbitrator authority to decide</p> |

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| | <p>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.</p> <p>(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.</p> <p>(d) The panel may issue sanctions under Rule 13212 if it determines that a party filed a motion under this rule in bad faith.</p> | | <p>such motions has generated confusion and collateral litigation.</p> <p>Generally, NASD believes that parties have the right to a hearing in arbitration. However, NASD also acknowledges that in certain extraordinary circumstances, it would be unfair to require a party to proceed to a hearing.</p> <p>To strike the appropriate balance between discouraging dispositive motions, but allowing them in certain circumstances, the rule would:</p> <ul style="list-style-type: none"> • provide that, except for motions relating to the eligibility of claims under the Code's six year time limit (Rule 13206), motions that would resolve a claim before a hearing on the merits are discouraged, and may only be granted in extraordinary circumstances; • require that a prehearing conference before the full panel must be held to |

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| | | | <p>discuss the motion before the panel could decide it; and</p> <ul style="list-style-type: none"> • allow the panel to issue sanctions against a party for making a dispositive motion in bad faith. |
| <p>Cooperation of Parties in Discovery</p> | <p>13505. Cooperation of Parties in Discovery</p> <p>The parties must cooperate to the fullest extent practicable in the [voluntary] exchange of documents and information to expedite the arbitration.</p> | <p>10321. General Provisions Governing Pre-Hearing Proceedings</p> <p>(a) Requests for Documents and Information</p> <p>The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. . . .</p> | <p>One of the most frequent comments made by users of the NASD forum is that the NASD's Discovery Guidelines are routinely ignored, resulting in significant delay and the frequent need for arbitrator intervention in the discovery process.</p> <p>To address these concerns, the revised Code would codify the discovery procedures currently outlined in the NASD Discovery Guide in Rules 13505-13511. The rules would extend the time parties have to respond to discovery requests under Rule 13506, but would also provide more serious consequences when parties fail to respond, or when parties frivolously object to production of documents or information.</p> |

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| | | | <p><u>NASD is amending Rule 13505 to remove the word “voluntary” to ensure that parties understand the importance of complying with the discovery process.</u></p> |
| <p>Discovery Requests</p> | <p>13506. Discovery Requests</p> <p><u>(a) Requests for Documents or Information</u></p> <p><u>Parties may request 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.</u></p> <p><u>(b) Making Discovery Requests</u></p> <p><u>[Such] Discovery requests may be served.</u></p> <ul style="list-style-type: none"> • On the claimant, or any respondent named in the initial statement of claim, 45 days or more after the Director serves the | | <p>New rule. The rule sets forth the requirements for a party to request documents or information from another party.</p> |

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| | <p style="text-align: center;">statement of claim; and</p> <ul style="list-style-type: none"> • On any party subsequently added to the arbitration, 45 days or more after the statement of claim is served on that party. <p>At the same time, the party must serve copies of the request on all other parties. Any request for documents or information should be specific and relate to the matter in controversy.</p> | | |
| <p>Responding to Discovery Requests</p> | <p>13507. Responding to Discovery Requests</p> <p>(a) Unless the parties agree otherwise, within 60 days from the date a discovery request is received, the party receiving the request must either:</p> <ul style="list-style-type: none"> • Produce the requested documents or information to all other parties; • Identify and explain the reason that specific requested documents or information cannot be | <p>10321. General Provisions Governing Pre-Hearing Proceedings</p> <p>(a) Requests for Documents and Information</p> <p>The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is</p> | <p>To address concerns of many frequent users of the forum that the current time frame to respond to discovery is unrealistic, and may therefore lead to unnecessary disputes, the rule would extend the initial time to respond to discovery lists from 30 to 60 days.</p> <p>In addition, the rule requires that a party who redacts any portion of a document prior to production must identify the redacted pages.</p> <p><u>NASD believes that the expectation for parties to act in</u></p> |

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| | <p>produced within the required time, and state when the documents will be produced; or</p> <ul style="list-style-type: none"> Object as provided in Rule 13508. <p><u>(b) A party must act in good faith when complying with paragraph (a) 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.</u></p> <p><u>(c) If a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled "redacted."</u></p> | <p>made a reasonable period of time to respond without interfering with the time set for the hearing.</p> <p>(b) Document Production and Information Exchange</p> <p>(1) Any party may serve a written request for information or documents ("information request") upon another party 45 calendar days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.</p> | <p><u>good faith is implied in the discovery provisions of the current Code and Industry Code. To avoid any ambiguity concerning the applicability of a "good faith" standard, however, NASD is amending Rule 13507 to expressly provide a "good faith" standard for compliance, so that frivolous delays, unreasonable timeframes, or bad-faith objections would be subject to sanctions under the Code.</u></p> |
| <p>Objecting to Discovery Requests;</p> | <p>13508. Objecting to Discovery Requests; Waiver of Objection</p> | <p>10321. General Provisions Governing Pre-Hearing Proceedings</p> | <p>The rule would provide more guidance regarding the procedures for objecting to a</p> |

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| Waiver of Objection | <p>(a) If a party objects to producing any document or information requested under Rule 13506, 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.</p> <p>(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.</p> | <p>(b) Document Production and Information Exchange</p> <p>(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.</p> | discovery request. |
| Motions to Compel Discovery | <p>13509. Motions to Compel Discovery</p> <p>(a) A party may make a motion asking the panel to order another party to produce documents or information if the other party has:</p> <ul style="list-style-type: none"> • Failed to comply with Rules | <p>10321. General Provisions Governing Pre-Hearing Proceedings</p> <p>(b) Document Production and Information Exchange</p> <p>(3) Any response to objections to an information request shall be served on all parties and</p> | The rule would provide more guidance regarding the procedures for resolving discovery disputes. |

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| | <p>13506 or 13507; or</p> <ul style="list-style-type: none"> • Objected to the production of documents or information under Rule 13508. <p>(h) Motions to compel discovery must be made, and will be decided, in accordance with Rule 13503. Such motions must include the disputed document request, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.</p> | <p>filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.</p> | |
| Depositions | <p>13510. Depositions</p> <p>Depositions are strongly discouraged in arbitration. Upon motion of a party, the panel may permit depositions, but only under very limited circumstances, including:</p> <ul style="list-style-type: none"> • 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 | | <p>New rule. Based on NASD Discovery Guide.</p> |

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| | <p>may not otherwise be required to participate in the hearing;</p> <ul style="list-style-type: none"> • To expedite large or complex cases; • In cases involving claims of statutory employment discrimination, if necessary and consistent with the expedited nature of arbitration; and • If the panel determines that extraordinary circumstances exist. | | |
| Discovery Sanctions | <p>13511. Discovery Sanctions</p> <p>(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 13212(a) for:</p> <ul style="list-style-type: none"> • Failing to comply with the discovery provisions of the Code, unless the panel determines that there is substantial justification for | | <p>New rule. Based on NASD Discovery Guide.</p> <p>The rule would codify the authority of arbitrators to address non-compliance with discovery rules or orders. NASD believes this provision will help alleviate discovery abuse in NASD arbitrations.</p> |

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| | <p>the failure to comply; or</p> <ul style="list-style-type: none"> • Frivolously objecting to the production of requested documents or information. <p>(b) The panel may dismiss a claim, defense or proceeding with prejudice in accordance with Rule 13212(c) for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.</p> | | |
| Subpoenas | <p>13512. Subpoenas</p> <p>(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.</p> <p>(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.</p> | <p>10322. Subpoenas and Power to Direct Appearances</p> <p>(a) Subpoenas</p> <p>The arbitrators and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law. All parties shall be given a copy of a subpoena upon its issuance. Parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.</p> | <p>The rule has been modified to require that if a subpoena is issued, the issuing party must send copies to all other parties at the same time and in the same manner as the subpoena was issued. This is intended to ensure that parties receive notice of the subpoena in a timely manner.</p> |

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| <p>Authority of Panel to Direct Appearances of Associated Persons and Production of Documents Without Subpoenas</p> | <p>13513. Authority of Panel to Direct Appearances of Associated Persons and Production of Documents Without Subpoenas</p> <p>(a) Upon motion of a party, the panel may order the following without the use of subpoenas:</p> <ul style="list-style-type: none"> • 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. <p>(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.</p> | <p>10322. Subpoenas and Power to Direct Appearances</p> <p>(b) Power to Direct Appearances and Production of Documents</p> <p>The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any member of the Association and/or the production of any records in the possession or control of such persons or members. Unless the arbitrator(s) directs otherwise, the party requesting the appearance of a person or the production of documents under this Rule shall bear all reasonable costs of such appearance and/or production.</p> | <p>No substantive change.</p> |
| <p>Exchange of Documents and Witness Lists</p> | <p>13514. Exchange of Documents and Witness Lists Before Hearing</p> | <p>10321. General Provisions Governing Pre-Hearing Proceedings</p> | <p>Frequent users of the forum have advised NASD that the current document exchange procedures</p> |

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| <p>Before Hearing</p> | <p>(a) Documents and Other Materials</p> <p>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.</p> <p>(b) Witness Lists</p> <p>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, [each party] <u>all parties</u> must file their witness lists with the Director, with enough copies for each arbitrator.</p> <p>(c) Exclusion of Documents or Witnesses</p> <p>Parties may not present any documents or other materials not</p> | <p>(a) Pre-Hearing Exchange</p> <p>At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession they intend to present at the hearing and shall identify witnesses they intend to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.</p> | <p>often result in the exchange of material that has already been exchanged, which can cause delay and add to the cost of arbitration without significantly assisting parties in preparing for hearing.</p> <p>Under the rule, parties would only be required to exchange copies of documents that have not already been produced to the other parties. This would save parties time, reduce cost, and would still ensure that parties exchange documents that they intend to use at the hearing.</p> <p>The rule also makes clear that the documents are not to be filed with the Director or the arbitrators before the hearing.</p> <p>To make witness lists more useful, the rule would require that witness lists include the names and business affiliations of any witnesses the parties intend to present at the hearing.</p> <p>The rule would also strengthen the consequences of non-</p> |

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| | <p>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. <u>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.</u></p> | | <p>compliance with the rule, by creating a presumption that parties may not present any documents not produced, or witnesses not identified, in accordance with the rule, unless the panel determines that good cause exists.</p> <p><u>NASD is amending Rule 13514(b) to correct a grammatical error.</u></p> <p><u>And NASD is amending Rule 13514(c) to clarify the types of documents that would not be considered rebuttal information, and therefore, should be exchanged. In amending the rule, NASD would be codifying current practice as the proposed language is currently contained in a form letter that is sent to parties advising them of the hearing date and location.</u></p> |

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| PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD | | | |
| Required Hearings | <p>13600. Required Hearings</p> <p>(a) Hearings will be held, unless:</p> <ul style="list-style-type: none"> • The arbitration is administered under Rule 13800 or Rule 13801; • The parties agree otherwise in writing; or • The arbitration has been settled, withdrawn or dismissed. <p>(b) The panel will decide the time and date of the hearing at the initial prehearing conference or otherwise in another manner.</p> <p>(c) The Director will notify the parties of the time and place at least [10] <u>20</u> days before the hearing begins, unless the parties agree to a</p> | <p>10303. Hearing Requirements—Waiver of Hearing</p> <p>(a) Any dispute, claim or controversy except as provided in Rule 10203 (Simplified Industry Arbitration) or Rule 10302 (Simplified Arbitration), shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.</p> <p>(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.</p> | <p>The rule would clarify that hearings are held in most arbitrations, but that hearings are not required to be held if: the arbitration is administered under the Simplified Arbitration rule; the parties agree to waive the hearing; or the arbitration has been settled, withdrawn or dismissed.</p> <p>The rule also incorporates the substance of paragraph (a) of current Rule 10315 regarding scheduling of hearings. The new rule leaves the manner of notification to the Director's discretion, and eliminates the reference to the "place" of the first hearing, because that is now covered by</p> |

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| | shorter time. | <p style="text-align: center;">* * *</p> <p>10315. Determination of Hearing Location</p> <p>(a) Designation of Time and Place of Hearing</p> <p>The Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing, and shall give notice of the time and place at least 15 business days prior to the date fixed for the first meeting by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give notice as the arbitrators may determine.</p> <p>Attendance at a meeting</p> | <p>Rule 13213, regarding selection of hearing locations.</p> <p>To expedite the administration of arbitrations, the rule also shortens the notice time from 15 business days to 10 calendar days.</p> <p><u>To standardize this timeframe with others in the Code, NASD is amending Rule 13600(c) to increase the notice period from 10 to 20 days to give parties more notice before a hearing begins.</u></p> |

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| <p>Postponement of Hearings</p> | <p>13601. Postponement of Hearings</p> <p>(a) [When a Hearing May Be Postponed] <u>Postponement of Hearings</u></p> <p><u>(1) When a Hearing Shall Be Postponed</u></p> <hr/> <p>agreement of the parties A hearing shall be postponed by</p> <p><u>(2) When a Hearing May Be Postponed</u></p> <p>[Any] hearing may be postponed</p> <ul style="list-style-type: none"> • [By agreement of the parties;] • By the Director, in extraordinary circumstances; • By the panel, in its own discretion; or • By the panel, upon motion of | <p>waives notice thereof.</p> <p>10319. Adjournments</p> <p>(a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.</p> <p>(b) If an adjournment requested by a party is granted after arbitrators have been appointed, the party requesting the adjournment shall pay a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed \$1,500, for a second or subsequent adjournment requested by that party. The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall allocate the fees among the requesting parties.</p> <p>(c) Upon receiving a third request consented to by all parties for an adjournment, the</p> | <p>Paragraph (a) of the rule has been amended to provide that the panel may not grant requests to postpone a hearing that are made within 10 days of a scheduled hearing session unless the panel determines that good cause exists. This provision is intended to reduce the number of last minute requests for postponements, a practice that many users of the forum believe results in unnecessary delay and unfairness to parties.</p> <p>In paragraph (b) of the rule, the fee would no longer increase for a second or subsequent request by the same party. This change is intended to simplify the rule and to avoid confusion when one party requesting a postponement has made a previous request, but one</p> |

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| | <p>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.</p> <p>(b) Postponement Fees</p> <p>(1) When a postponement is granted, 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 13902. 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.</p> <p>(2) <u>If a postponement request is made by one or more parties and</u></p> | <p>arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.</p> <p>(d) If an adjournment 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 adjournment, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or a 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 adjournment. In the event that a request results in the adjournment of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In</p> | <p>or more of the other parties requesting the same postponement have not.</p> <p>The rule also gives the panel the authority to allocate the postponement fees among non-requesting parties if the panel determines that the non-requesting party caused or contributed to the need for the postponement.</p> <p>In paragraph (c) of the rule, the panel may dismiss the arbitration without prejudice if all parties jointly request more than two postponements. The change is intended to clarify that arbitrators have the authority to dismiss the arbitration upon a fourth or subsequent request. The current rule might be interpreted to limit the arbitrators' authority to the third joint</p> |

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| | <p><u>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.</u></p> <p>(3) No postponement fee will be charged if a hearing is postponed:</p> | <p>the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.</p> | <p>request.</p> <p><u>NASD is amending Rule 13601 to expressly distinguish between when a hearing may be postponed and when a hearing must be postponed. Also, NASD is adding language from a proposed rule change, SR-NASD-2003-164, that was approved by the SEC, but inadvertently omitted from the last amendment to the Code.</u></p> |

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| | <ul style="list-style-type: none"> • 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. <p>(e) Dismissal of Arbitration Due to Multiple Postponements</p> <p>If all parties jointly request, or agree to, more than two postponements, the panel may dismiss the arbitration without prejudice.</p> | | |
| Attendance at Hearings | <p>13602. Attendance at Hearings</p> <p>The parties and their representatives are entitled to attend all hearings. <u>Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings.</u> The panel will decide who else may attend any or all of the hearings.</p> | <p>10317. Attendance at Hearings</p> <p>The attendance or presence of all persons at hearings including witnesses shall be determined by the arbitrators. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.</p> | <p>No substantive change.</p> <p><u>NASD believes that expert witnesses should be allowed to attend all hearings. However, the panel has the discretion to allow other persons to attend the hearing (e.g., an individual assisting an elderly or disabled party) or to bar someone who</u></p> |

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| | | | <u>may be disruptive to the proceeding. Therefore, NASD is amending Rule 13602 to clarify that expert witnesses should be permitted to attend all hearings.</u> |
| Failure to Appear | <p>13603. Failure to Appear</p> <p>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.</p> | <p>10318. Failure to Appear</p> <p>If any of the parties, after due notice, fails to appear at a hearing or at any continuation of a hearing session, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.</p> | No substantive change. |
| Evidence | <p>13604. Evidence</p> <p>(a) The panel will decide what evidence to admit. The panel is not required to follow state or federal rules of evidence.</p> <p>(b) Production of documents in discovery does not create a presumption that the documents are</p> | <p>10323. Evidence</p> <p>The arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.</p> | <p>Paragraph (a) of the rule clarifies that the panel determines the admissibility of evidence and that the panel is not required to follow state or federal rules of evidence.</p> <p>Paragraph (b) of the rule has been added to clarify</p> |

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| | 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. | | that the production of documents in discovery does not create the presumption that they are admissible at the hearing. It further provides that a party can object to the introduction of any document as evidence at the hearing. |
| Witness Oath | 13605. Witness Oath All witnesses must testify under oath or affirmation. | 10327. Oaths of the Arbitrators and Witnesses Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation. | The arbitrator oath requirement has been moved to Rule 13406(d), governing appointment of arbitrators. |
| Record of Proceedings | 13606. Record of Proceedings (a) Tape Recording (1) Except as provided in (a), 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. | 10326. Record of Proceedings (a) A verbatim record by stenographic reporter or a tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the | This rule has been amended to reflect current practice, to eliminate possible confusion regarding the official record, and to give parties more specific guidance on how proceedings will be recorded and how the cost of the record will be allocated among the parties. |

(2) The panel may order the

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| | <p>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.</p> <p>(3) The tape recording is the official record of the proceeding, even if it is transcribed.</p> <p>(b) Stenographic Record</p> <p>(e) Any party may make 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.</p> <p>(2) If the stenographic record is the official record of the proceeding, a copy must be provided to the Director, each</p> | <p>request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.</p> <p>(b) A verbatim record of mediation conducted pursuant to the Rule 10400 Series shall not be kept.</p> | |

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| | <p>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.</p> | | |
| <p>Order of Presentation of Evidence and Arguments</p> | <p>13607. Order of Presentation of Evidence and Arguments</p> <p>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.</p> | <p>IM-10317. Closing Arguments</p> <p>In response to recent questions concerning the order of closing argument in arbitration proceedings conducted under the auspices of the National Association of Securities Dealers, Inc., it is the practice in these proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedures may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.</p> | <p>This rule expands the scope of current IM-10317 to provide guidance to parties regarding not only the order of closing arguments, but also the presentation of evidence.</p> |
| <p>Closing The</p> | <p>13608. Closing the Record</p> | | <p>New rule. The current</p> |

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| Record | <p>(a) The panel will decide when the record is closed. Once the record is closed, no further submissions will be accepted from any party.</p> <p>(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.</p> <p>(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.</p> | | <p>Code contains a rule (10329) that allows the panel to reopen the hearings before the award is rendered. This implies that the panel had finished hearing the case and was in the process of determining the award. However, the current Code does not have a rule stating when the panel can close the record and begin deliberating to determine the award. Thus, the rule has been added to reflect current practice and provide an explanation on how a panel decides to close a record.</p> |
| Reopening the Record | <p>13609. Reopening the Record</p> <p>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</p> | <p>10329. Reopening of Hearings</p> <p>Where permitted by applicable law, the hearings may be reopened by the arbitrators on</p> | <p>No substantive change.</p> |

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| | applicable law. | their own motion or at the discretion of the arbitrators upon application of a party at any time before the award is rendered. | |

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| PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD | | | |
| Dismissal of Proceedings Prior to Award | <p>13700. Dismissal of Proceedings Prior to Award</p> <p>(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.</p> <p>(b) The panel may dismiss a claim or an arbitration.</p> <ul style="list-style-type: none"> • Upon motion of a party under Rule 13206 or Rule 13504; or • On its own initiative under Rule 13212(c) or Rule 13601(c). | <p>10305. Dismissal of Proceedings</p> <p>(a) At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to their judicial remedies, or to any dispute resolution forum agreed to by the parties, without prejudice to any claims or defenses available to any party.</p> <p>(b) The arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.</p> | <p>The new rule cross-references the sections of the Code that authorize the panel to dismiss a claim prior to award in certain circumstances: Rule 13206 (six-year eligibility rule); Rule 13504 (motions to dismiss prior to award); Rule 13211 (sanctions); and Rule 13601 (postponements).</p> |

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| Settlement | <p>13701. Settlement</p> <p>(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.</p> <p>(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.</p> | <p>10306. Settlements</p> <p>(a) Parties to an arbitration may agree to settle their dispute at any time.</p> <p>(b) If the parties agree to settle their dispute, they will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions and fees incurred as a result of adjournments, pursuant to Rule 10319.</p> <p>(c) The terms of a settlement agreement do not need to be disclosed to the Association. However, if the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.</p> | <p>The rule clarifies that parties must notify the Director in writing that a settlement has been reached to prevent any additional fees from accruing.</p> |
| Withdrawal of Claims | 13702. Withdrawal of Claims | | New rule. This rule is intended to provide |

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| | <p>(a) Before a claim has been answered by a party, the claimant may withdraw the claim against that party with or without prejudice.</p> <p>(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.</p> | | <p>guidance to parties and arbitrators regarding withdrawals and to prevent prejudice to a party that has filed an answer.</p> |

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| PART VIII SIMPLIFIED ARBITRATION; DEFAULT PROCEEDINGS; STATUTORY EMPLOYMENT DISCRIMI- NATION CLAIMS; AND INJUNCTIVE RELIEF | | | |
| Simplified Arbitration | <p>13800. Simplified Arbitration</p> <p>(a) Applicability of Rule</p> <p>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.</p> <p>(b) Single Arbitrator</p> <p>All arbitrations administered under this rule will be decided by a single arbitrator appointed from the NASD's chairperson roster in accordance with</p> | <p>10302. Simplified Arbitration</p> <p>(a) Any dispute, claim, or controversy arising between a public customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding \$25,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.</p> <p>(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the</p> | <p>The simplified arbitration rule has been significantly shortened and simplified. Currently, in addition to the procedures that are unique to simplified arbitrations, Rule 10302 repeats some, but not all, of the general provisions that apply to both regular and simplified cases. The rule includes only those provisions that are unique to simplified cases.</p> <p>The rule does not include special time limits or</p> |

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| | <p>the Neutral List Selection System, unless the parties agree in writing otherwise.</p> <p>(c) Hearings</p> <p>(1) No hearing will be held under this rule unless the customer requests a hearing.</p> <p>(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.</p> <p>(d) Discovery and Additional Evidence</p> <p>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</p> | <p>controversy in dispute and the required deposit, together with documents in support of the Claim. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether a hearing is demanded.</p> <p>(c) The Claimant shall pay a non-refundable filing fee and shall remit a hearing session deposit as specified in Rule 10332 of this Code upon the filing of the Submission Agreement. The final disposition of the fee or deposit shall be determined by the arbitrator.</p> <p>(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of</p> | <p>deadlines for pleadings in simplified cases as the current rule does, because the time limits would now be the same as those in regular cases. Frequent users of the forum, as well as NASD staff, report that the time limits in simplified cases are routinely extended under the current rule. Requests for extensions would now be governed by the same rule (Rule 13207) as in other cases. Rule 13207 provides that deadlines set by the Code may be extended by the Director for good cause. In simplified cases, the Director would consider the expedited nature of simplified cases in determining whether good cause existed in a given case. NASD believes that this approach will simplify and streamline the administration of simplified cases, and, because extensions are routine</p> |

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| | <p>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.</p> <p>(e) Increases in Amount in Dispute</p> <p>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 13401, the remaining arbitrators will be appointed by the Director in accordance with Rule 13406(b). If no arbitrator has been appointed, the entire panel will be appointed in accordance with the Neutral List Selection System.</p> <p>(f) Arbitrator Honoraria</p> <p>NASD will pay the arbitrator an honorarium of \$125 for each</p> | <p>the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third- Party Respondent with an executed Submission Agreement, a copy of the Respondent's Answer</p> | <p>under the current Code, will not result in significant delay in the administration of simplified cases.</p> <p>Under the rule, the single arbitrator would be selected from the chairperson roster, unless the parties agreed otherwise.</p> <p>The rule would eliminate the ability of the single arbitrator to require a hearing. The customer could still request a hearing.</p> <p>Under the rule, the single arbitrator would no longer be able to request a three-arbitrator panel, and the arbitrator would no longer have the option of dismissing without prejudice a counterclaim or other responsive pleading that increased the amount in dispute above the simplified case threshold.</p> |

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| | arbitration administered under this rule. | <p>containing the Third-Party Claim, and a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$25,000 exclusive of attendant costs and interest, the arbitrator may refer the Claim, Counterclaim and/or Third-Party Claim, if any, to a panel of three (3) arbitrators in accordance with Rule 10308 or, he may dismiss the Counterclaim and/or Third-Party Claim without prejudice to the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counterclaim and/or Third-Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 10332.</p> <p>(e) All parties shall serve on all other parties and the Director of Arbitration, with sufficient</p> | <p>If a pleading increased the amount in dispute above the threshold, the case would be administered under the regular provisions of the Code.</p> <p>Both changes are intended to streamline and simplify the administration of arbitrations.</p> |

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| | | <p>additional copies for the arbitrator(s), a copy of the Answer, Counterclaim, Third-Party Claim, Amended Claim, or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either (1) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a Reply to any Counterclaim or, (2) if the amount of the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings shall be discontinued without prejudice to the rights of the parties.</p> <p>(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry appointed by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the</p> | |

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| | | <p>arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.</p> <p>(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.</p> <p>(h)</p> <p>(1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.</p> <p>(2) If a hearing is demanded or consented to in accordance with paragraph (f), the General Provisions Governing Pre-Hearing Proceedings under Rule 10321 shall apply.</p> <p>(3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the</p> | |

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| | | <p>Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its request for document production on all parties. Any response or objections to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The appointed arbitrator shall resolve all requests under this Rule on the papers submitted.</p> <p>(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel which shall decide the matter in controversy.</p> <p>(j) In any case where there is more than one (1) arbitrator, the majority shall be public arbitrators.</p> <p>(k) In his discretion, the arbitrator may, at the request of</p> | |

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| | | <p>any party, permit such party to submit additional documentation relating to the pleadings.</p> <p>(I) Except as otherwise provided herein, the general arbitration rules of the Association shall be applicable to proceedings instituted under this Rule.</p> | |
| <p>Default Proceedings</p> | <p>13801. Default Proceedings</p> <p>(a) Applicability of Rule</p> <p>A claimant may request a default that falls within one of the following categories and fails to file an answer within the time provided by the Code.</p> <ul style="list-style-type: none"> • 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 | <p>10314. Initiation of Proceedings</p> <p>(e) Default Procedures</p> <p>(1) A Respondent, Cross-Respondent, or Third-Party Respondent that fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to paragraph (b)(5), may be subject to default procedures, as provided in this paragraph, if it is:</p> <p>(A) a member whose membership has been terminated, suspended,</p> | <p>No substantive change.</p> |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <ul style="list-style-type: none"> • An associated person whose registration is terminated, revoked, or suspended. <p>(b) Initiating Default Proceedings</p> <p>(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.</p> <p>(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:</p> <ul style="list-style-type: none"> • Notify all parties that the claim against the defaulting respondent will | <p>canceled, or revoked;</p> <p>(B) a member that has been expelled from the NASD;</p> <p>(C) a member that is otherwise defunct; or</p> <p>(D) an associated person whose registration is terminated, revoked, or suspended.</p> <p>(2) If all Claimants elect to use these default procedures, the Claimant(s) shall notify the Director in writing and shall send a copy of such notification to all other parties at the same time and in the same manner as the notification was sent to the Director.</p> <p>(3) If the case meets the requirements for proceeding under default procedures, the Director shall notify all parties.</p> <p>(4) The Director shall appoint a single arbitrator pursuant to Rule 10308 to consider the Statement of Claim and other documents presented by the</p> | |

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| | <p>proceed under this rule; and</p> <ul style="list-style-type: none"> • 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. <p>(c) Hearings</p> <p>No hearing shall be held. The arbitrator may request additional information from the claimant before rendering an award.</p> <p>(d) Amendments to Increase Relief Requested</p> <p>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.</p> <p>(e) Awards</p> <p>(1) The arbitrator shall only on the</p> | <p>Claimant(s). The arbitrator may request additional information from the Claimant(s) before rendering an award. No hearing shall be held, and the default award shall have no effect on any non-defaulting party.</p> <p>(5) The Claimant(s) may not amend the claim to increase the relief requested after the Director has notified the parties that the claim will proceed under default procedures.</p> <p>(6) An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor. 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.</p> <p>(7) If the Respondent files an Answer after the Director has</p> | |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <p>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.</p> <p>(g) If a default award shall have no effect on any non-defaulting party.</p> <p>(f) Respondent's Answer</p> <p>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.</p> | <p>notified the parties that the claim will proceed under default procedures but before an award has been rendered, the proceedings under this paragraph shall be terminated and the case will proceed under the regular procedures.</p> | |
| <p>Statutory Employment Discrimination Claims</p> | <p>13802. Statutory Employment Discrimination Claims</p> <p>(a) Applicability of Rule</p> | <p>10210. Statutory Employment Discrimination Claims</p> <p>The Rule 10210 shall apply only</p> | |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <p>This rule applies to arbitrations involving a claim of statutory employment discrimination as defined in Rule 13100(v) (y). Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.</p> <p>(b) Number of Arbitrators</p> <p>(1) Claims of \$100,000 or Less in a case involving an employment discrimination claim is \$100,000 or less, the panel will consist of one arbitrator.</p> <p>\$100,000 (2) Claims of More Than If the amount of a claim in a case involving an employment discrimination claim is more than \$100,000, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.</p> <p>(c) Composition of Panel</p> <p>(1) One Arbitrator</p> | <p>to disputes that include a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute. The Rule 10210 shall supersede any inconsistent Rules contained in this Code.</p> <p>10211. Special Arbitrator Qualifications for Employment Discrimination Disputes</p> <p>(a) Minimum Qualifications for All Arbitrators Only arbitrators classified as public arbitrators as provided in Rule 10308 shall be selected to consider disputes involving a claim of employment discrimination, including a sexual harassment claim, in violation of a statute.</p> <p>(b) Single Arbitrators or Chairs of Three-Person Panels</p> <p>(1) Arbitrators who are selected to serve as single arbitrators or as chairs of three-</p> | |

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| | <p>arbitrator, the arbitrator will be a public arbitrator who will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise.</p> <p>(2) Three Arbitrators</p> <p>arbitrators, the arbitrators will all be public arbitrators, one of whom will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise. The arbitrator who meets the criteria in paragraph (c)(3) will serve as chairperson of the panel.</p> <p>Discrimination Claim Qualifications</p> <p>(3) Special Statute</p> <p>Chairperson of a three-arbitrator panel in a case involving a statutory discrimination claim must have the following qualifications:</p> <p>(A) law degree (Juris Doctor or equivalent);</p> <p>(B) membership in the Bar of</p> | <p>person panels should have the following additional qualifications:</p> <p>(A) law degree (Juris Doctor or equivalent);</p> <p>(B) membership in the Bar of any jurisdiction;</p> <p>(C) substantial familiarity with employment law; and</p> <p>(D) ten or more years of legal experience, of which at least five years must be in either:</p> <p>(i) law practice;</p> <p>(ii) law school teaching;</p> <p>(iii) government enforcement of equal employment opportunity statutes;</p> <p>(iv) experience as a judge, arbitrator, or mediator; or</p> | |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <p>any jurisdiction;</p> <p>(C) substantial familiarity with employment law; and</p> <p>(D) ten or more years of legal experience, of which at least five years must be in either:</p> <ul style="list-style-type: none"> • law practice; • law school teaching; • government enforcement of equal employment opportunity statutes; • experience as a judge, arbitrator, or mediator; or • experience as an equal employment opportunity officer or in-house counsel of a corporation. <p>In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years. For purposes of this rule, the term</p> | <p>(v) experience as an equal employment opportunity officer or in-house counsel of a corporation.</p> <p>(2) In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years. For purposes of this Rule, the term "primarily" shall be interpreted to mean 50% or more of the arbitrator's business or professional activities within the last five years.</p> <p>(c) Waiver of Special Qualifications</p> <p>dispute arises, they may waive any of the qualifications set forth in paragraph (a) or (b) above.</p> <p>10212. Composition of Panels</p> | |

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| | <p>"primarily" shall be interpreted to mean 50% or more of the arbitrator's business or professional activities within the last five years.</p> <p>(4) Waiver of Special Qualifications</p> <p>dispute arises, they may waive any of the qualifications set forth in paragraph (A) or (B) above.</p> <p>(d) Awards</p> <p>The panel may award any relief that would be available in court under the law. The panel must issue an award setting forth a summary of the issues, including the type(s) of dispute(s), the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).</p> <p>(e) Attorneys' Fees</p> <p>The panel may provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law.</p> | <p>For disputes involving a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute:</p> <p>(a) Each panel shall consist of either a single public arbitrator or three public arbitrators qualified under Rule 10211, unless the parties agree to a different panel composition.</p> <p>(b) A single arbitrator shall be appointed to hear claims for \$100,000 or less.</p> <p>(c) A panel of three arbitrators shall be appointed to hear claims for more than \$100,000, unless the parties agree to have their case determined by a single arbitrator.</p> <p>10213. Discovery</p> <p>(a) Necessary pre-hearing depositions consistent with the expedited nature of arbitration shall be available.</p> | |

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| | | <p>(b) The provisions of Rule 10321 shall apply to proceedings under this Rule 10210 Series.</p> <p>10214. Awards</p> <p>The arbitrator(s) shall be empowered to award any relief that would be available in court under the law. The arbitrator(s) shall issue an award setting forth a summary of the issues, including the type(s) of dispute(s), the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).</p> <p>10215. Attorneys' Fees</p> <p>The arbitrator(s) shall have the authority to provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law.</p> | |
| Coordination of Statutory | 13803. Coordination of Statutory Employment Discrimination Claims | 10216. Coordination of Claims Filed in Court and in | |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| <p>Employment Discrimination Claims Filed in Court and in Arbitration</p> | <p>Filed in Court and in Arbitration</p> <p>(a) Option to Combine Related Claims in Court</p> <p>(1) (A) If a current or former associated person files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at NASD against some or all of the same parties, a respondent who is named in both proceedings may, upon motion, compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.</p> <p>notify the claimant in writing, before the respondent's answer has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right</p> | <p>Arbitration</p> <p>(a) Option to Combine Related Claims in Court</p> <p>(1)(A) If a current or former associated person of a member files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at the Association against some or all of the same parties, a respondent who is named in both proceedings shall have the option to move to compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.</p> <p>(B) The respondent shall notify the claimant in writing, before the time to answer under Rule 10314 has expired, that it is exercising</p> | |

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| | <p>to compel the claimant to assert related claims in court, except as provided in paragraph (b).</p> <p>(2) (A) If a member or current or former associated person ("party") has a pending claim in arbitration against a current or former associated person and the current or former associated person thereafter asserts a related statutory discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.</p> <p>current or former associated person. The party must file an answer to the complaint in court, that it is exercising this option and must file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.</p> <p>(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.</p> | <p>this option and shall file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to move to compel the claimant to assert related claims in court, except as provided in paragraph (b).</p> <p>(2)(A) If a member or current or former associated person of a member ("party") has a pending claim in arbitration against a current or former associated person of a member and the current or former associated person thereafter asserts a related statutory employment discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.</p> <p>(B) The party shall notify the current or former associated person in writing, before filing an answer to the</p> | |

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| | <p>(b) Option Extended When Claim is Amended</p> <p>(1) If the claimant files an amended statement of claim adding new claims not asserted in the original statement of claim, a respondent named in the amended statement of claim may, upon motion, compel the claimant to assert all related claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent that the court will accept jurisdiction over the related claims, even if those related claims were asserted in the original statement of claim.</p> <p>(2) The respondent must notify the claimant in writing, before the time to answer the amended statement of claim has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer to the amended statement of claim without having exercised this option, it shall have waived its right to compel the claimant to assert related claims in</p> | <p>complaint in court, that it is exercising this option and shall file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.</p> <p>(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.</p> <p>(b) Option Extended When Claim is Amended</p> <p>(1) If the claimant files an amended Statement of Claim adding new claims not asserted in the original Statement of Claim, a respondent named in the amended Statement of Claim shall have the right to move to compel the claimant to assert all related claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent</p> | |

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| | <p>court.</p> <p>(c) Requirement to Combine All Related Claims</p> <p>If a party elects to require a current or former associated person to assert all related claims in court, the party must assert in the same court proceeding all related claims that it has against the associated person to the full extent to which the court will accept jurisdiction over the related claims.</p> <p>(d) Right of Respondent to Remain in Arbitration</p> <p>(1) If there are multiple respondents and a respondent has exercised an option under paragraph (a) or (b), but another respondent wishes to have the claims against it remain in arbitration, then any remaining party may apply for a stay of the arbitration proceeding.</p> <p>(2) If a panel has not been appointed, the Director will appoint a single arbitrator to consider the application for a stay. The single</p> | <p>that the court will accept jurisdiction over the related claims, even if those related claims were asserted in the original Statement of Claim.</p> <p>(2) The respondent shall notify the claimant in writing, before the time to answer the amended Statement of Claim under Rule 10314 has expired, that it is exercising this option and shall file a copy of such notification with the Director. If the respondent files an answer to the amended Statement of Claim without having exercised this option, it shall have waived its right to move to compel the claimant to assert related claims in court.</p> <p>(c) Requirement to Combine All Related Claims</p> <p>If a party elects to require a current or former associated person to assert all related claims in court, the party shall assert in the same court proceeding all related claims</p> | |

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| | <p>arbitrator shall be selected using the Neutral List Selection System and is not required to have the special employment arbitrator qualifications described in Rule 13801(c).</p> <p>(3) If a panel has been appointed, the panel must stay the arbitration unless the arbitrator or panel determines that the stay would result in substantial prejudice to one or more of the parties.</p> <p>(e) Pre-Filing Certification</p> <p>(1) Before or at the same time that the statement of claim is filed, a claimant may file with the Director a certification that it communicated unsuccessfully with the respondent concerning the consolidation of all claims in court prior to filing a statement of claim, in an effort to save the expense of arbitration fees. A copy of such certification must be sent to the respondent at the same time and in the same manner as the filing with the Director.</p> | <p>that it has against the associated person to the full extent to which the court will accept jurisdiction over the related claims.</p> <p>(d) Right of Respondent to Remain in Arbitration</p> <p>(1) If there are multiple respondents and a respondent has exercised an option under paragraph (a) or (b), but another respondent wishes to have the claims against it remain in arbitration, then any remaining party may apply for a stay of the arbitration proceeding.</p> <p>(2) The arbitration shall be stayed unless the arbitration panel determines that the stay will result in substantial prejudice to one or more of the parties. If a panel has not been appointed, the Director shall appoint a single arbitrator to consider the application for a stay. Such single arbitrator shall be selected using the Neutral List</p> | |

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| | <p>(2) If, after a certification has been filed, all the respondents later exercise the option to consolidate all claims in court, the Director will return the claimant's filing fee, but will retain the member surcharge and any accrued member process fees. If there are any remaining respondents, the filing fee will be adjusted to correspond to the claims against the remaining respondents.</p> <p>(f) Motion to Compel Arbitration</p> <p>If a member or a current or former associated person files in court a claim against a member or a current or former associated person that includes matters that are subject to mandatory arbitration, either by the rules of NASD or by private agreement, the defending party may, upon motion, compel arbitration of the claims that are subject to mandatory arbitration.</p> | <p>Selection System (as defined in Rule 10308) and is not required to have the special employment arbitrator qualifications described in Rule 10211.</p> <p>(e) Pre-Filing Certification</p> <p>(1) Prior to or concurrently with filing a Statement of Claim, a claimant may file with the Director a certification that it had communicated unsuccessfully with the respondent concerning the consolidation of all claims in court prior to filing a Statement of Claim, in an effort to save the expense of arbitration fees. A copy of such certification shall be sent to the respondent at the same time and in the same manner as the filing with the Director.</p> <p>(2) If, after a certification has been filed, all the respondents later exercise the option to consolidate all claims in court, the Director will return the claimant's filing</p> | |

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| | | <p>fee and any hearing session deposits for hearings that have not been held, but will retain the member surcharge and any accrued member process fees. If there are any remaining respondents, the filing fee and any hearing deposits will be adjusted to correspond to the claims against the remaining respondents.</p> <p>(f) Motion to Compel Arbitration</p> <p>If a member or a current or former associated person of a member files in court a claim against a member or a current or former associated person of a member that includes matters that are subject to mandatory arbitration, either by the rules of the Association or by private agreement, the defending party may move to compel arbitration of the claims that are subject to mandatory arbitration.</p> | |

(g) Definitions

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| | | <p>For purposes of this Rule:</p> <p>(1) The term "related claim" shall mean any claim that arises out of the employment or termination of employment of an associated person.</p> <p>(2) The term "statutory discrimination claim" means a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute.</p> | |
| <p>Temporary Injunctive Orders; Requests for Permanent Injunctive Relief</p> | <p>13804. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief</p> <p>(a) Temporary Injunctive Orders</p> <p>(1) In industry or clearing disputes required to be submitted to arbitration under the Code, parties may seek a temporary injunctive order from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already</p> | <p>10335. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief</p> <p>(a) Temporary Injunctive Orders</p> <p>(1) In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties may seek a temporary injunctive order, as defined in paragraph (a)(2) of this Rule, from a court of competent jurisdiction. Parties to a</p> | |

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| | <p>filed a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief pursuant to paragraph (b) of this rule has not yet begun.</p> <p>injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration under the Code must, at the same time, file with the Director a statement of claim requesting permanent injunctive and all other relief with respect to the same dispute in the manner specified under the Code. The party seeking temporary injunctive relief must also serve the statement of claim requesting permanent injunctive and all other relief on all other parties in the same manner and at the same time as the statement of claim is filed with the Director.</p> <p>this rule must be made by facsimile, overnight delivery service or messenger. Service must be made on all parties at the same time and in the same</p> | <p>pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief pursuant to paragraph (b) of this Rule has not yet begun.</p> <p>(2) For purposes of this Rule, temporary injunctive order means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.</p> <p>(3) A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file with the Director a Statement of Claim requesting permanent</p> | |

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| | <p>manner, unless the parties agree otherwise. A party obtaining a court-issued temporary injunctive order must notify the Director and the other parties of the issuance of the order within one business day.</p> <p>(b) Hearing on Request for Permanent Injunctive Relief</p> <p>(1) Scheduling of Hearing</p> <p>injunctive order, an arbitration hearing on the request for permanent injunctive relief will begin within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. Unless the parties agree otherwise, a hearing lasting more than one day will be held on consecutive days when reasonably possible. The Director will provide to all parties notice of the date, time and place of the hearing at least three days prior to the beginning of the hearing.</p> <p>(2) Composition of Arbitration</p> | <p>injunctive and all other relief with respect to the same dispute in the manner specified under this Code. The party seeking temporary injunctive relief shall also serve the Statement of Claim requesting permanent injunctive and all other relief on all other parties in the same manner and at the same time as the Statement of Claim is filed with the Director. Filings and service under this Rule shall be made by facsimile, overnight delivery service or messenger. Service shall be made on all parties at the same time and in the same manner, unless the parties agree otherwise. A party obtaining a court-issued temporary injunctive order shall notify the Director and the other parties of the issuance of the order within one business day.</p> <p>(4) Unless otherwise stated, for purposes of computation of time under</p> | |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <p>Panel</p> <p>Permanent injunctive relief will be heard by a panel of three arbitrators. The composition of the panel will be determined in accordance with Rule 13402.</p> <p>(3) Selection of Arbitrators and Chairperson</p> <p>(A)</p> <p>of the members of the panel (i) In cases in which all are non-public, the Director will generate and provide to the parties a list of seven arbitrators from NASD's roster of non-public arbitrators. The Director will send to the parties the employment history for the past 10 years for each listed arbitrator and other background information. At least three of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.</p> <p>exercise one strike to the (ii) Each party may</p> | <p>any paragraph of this Rule, any reference to days means calendar days, including Saturdays, Sundays or any NASD holiday. However, if a party must provide notice or a response to the Director and the day on which that notice or response to the Director must be given falls on a Saturday, Sunday or any NASD holiday, then the time period is extended until the next business day.</p> <p>(b) Hearing on Request for Permanent Injunctive Relief</p> <p>(1) Scheduling of Hearing</p> <p>If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief shall begin within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. Unless</p> | |

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| | <p>arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.</p> <p>(B) panel consists of a majority of public arbitrators, the Director will generate and provide to the parties a list of nine arbitrators from NASD's roster of arbitrators. The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information. At least a majority of the arbitrators listed shall be public arbitrators, and at</p> | <p>the parties agree otherwise, a hearing lasting more than one day shall be held on consecutive days when reasonably possible. The Director shall provide to all parties notice of the date, time and place of the hearing at least three days prior to the beginning of the hearing.</p> <p style="text-align: center;">(2) Composition of Arbitration Panel</p> <p>The hearing on the request for permanent injunctive relief shall be heard by a panel of three arbitrators, who shall either be all non-public arbitrators as defined in Rule 10308(a)(4), or, if the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under Rule 10202, a majority of public arbitrators as defined in Rule 10308(a)(5).</p> <p style="text-align: center;">(3) Selection of Arbitrators and Chairperson</p> | |

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| | <p>least four of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.</p> <p>exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director will combine the parties' rankings, and will appoint arbitrators based on the order of rankings on the combined list, subject to the arbitrators' availability and disqualification.</p> <p>(C)</p> <p>inform the Director of its preference of chairperson of the panel by the close of business on the next business day after receiving notice of the panel members.</p> | <p>(A)(i) In cases in which all of the members of the arbitration panel are non-public under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators. The Director shall send to the parties the employment history for the past 10 years for each listed arbitrator and other background information. At least three of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.</p> <p>exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties'</p> | |

(ii) If the parties do not

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| | <p>agree on a chairperson within that time, the Director shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the Director will select a public arbitrator as chairperson. Whenever possible, the Director will select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest.</p> <p>exercise discretionary authority and make any decision that is consistent with the purposes of this rule and the Code to facilitate the appointment of panels and the selection of chairperson.</p> <p>(4) Applicable Legal Standard</p> <p>The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the</p> | <p>rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.</p> <p>(B)(i) In cases in which the panel of arbitrators consists of a majority of public arbitrators under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information. At least a majority of the arbitrators listed shall be public arbitrators, and at least four of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.</p> <p>(ii) Each party may exercise two strikes to the arbitrators on the list. Within</p> | |

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| | <p>parties.</p> <p>(5) Effect of Pending Temporary Injunctive Order</p> <p>Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.</p> <p>(6) Fees, Costs and Expenses, and Arbitrator Honorarium</p> <p>(A) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the</p> | <p>three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.</p> <p>(C)(i) Each party shall inform the Director of its preference of chairperson of the arbitration panel by the close of business on the next business day after receiving notice of the panel members.</p> <p>agree on a chairperson within that time, the Director shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the Director shall select a public arbitrator as chairperson. Whenever</p> | |

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| | <p>request for permanent injunctive relief. The panel may reallocate such costs and expenses among the parties in the award.</p> <p>(B) Each party seeking a temporary injunctive order in court pursuant to this rule must pay a non-refundable surcharge of \$2,500 at the time the party files its statement of claim and request for permanent injunctive relief. In the award, the panel may decide that one or more parties must reimburse a party for part or all of the surcharge. The surcharge is in addition to all other non-refundable filing fees or costs that are required under the Code.</p> <p>(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this rule shall receive an honorarium of \$375 for each single session, and \$700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of \$300 for each single session, and \$600 for each double</p> | <p>possible, the Director shall select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest.</p> <p>(D) The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and Rule 10308 to facilitate the appointment of arbitration panels and the selection of chairperson.</p> <p>(4) Applicable Legal Standard</p> <p>The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.</p> | |

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| | <p>session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to Rule 13214. The panel may reallocate such amount among the parties in the award.</p> <p>(6) Hearing on Damages or Other Relief</p> <p>(1) Upon completion of the hearing on the request for permanent relief, the panel may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held before the same panel and which shall include, but not be limited to, the same record.</p> <p>(2) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in any subsequent hearings on damages or other relief. The panel may reallocate such costs and expenses among the parties in</p> | <p>(5) Effect of Pending Temporary Injunctive Order</p> <p>Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.</p> <p>(6) Fees, Costs and Expenses, and Arbitrator Honorarium</p> <p>(A) The parties shall jointly bear reasonable travel-related costs and</p> | |

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| | the award. | <p>expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the request for permanent injunctive relief. The arbitrators may reallocate such costs and expenses among the parties in the award.</p> <p>(B) The party seeking injunctive relief shall pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. In either event, however, the arbitrators may reallocate such fees among the parties in the award.</p> <p>(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this Rule</p> | |

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| | | <p>shall receive an honorarium of \$375 for each single session, and \$700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of \$300 for each single session, and \$600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to IM-10104. The arbitrators may reallocate such amount among the parties in the award.</p> <p>(c) Hearing on Damages or Other Relief</p> <p>(1) Upon completion of the hearing on the request for permanent relief, the panel, may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held</p> | |

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| | | <p>before the same panel of arbitrators and which shall include, but not be limited to, the same record.</p> <p>(2) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in any subsequent hearings on damages or other relief. The arbitrators may reallocate such costs and expenses among the parties in the award.</p> <p>(d) Effective Date</p> <p>This Rule shall apply to arbitration claims filed on or after March 25, 2002. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule.</p> | |

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| PART IX FEES AND AWARDS | | | |
| Fees Due When a Claim is Filed | <p>13900. Fees Due When a Claim [i]s Filed</p> <p>(a) Fees for Claims Filed by Associated Persons</p> <p>(a) Associated persons who file 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 13307.</p> <p>(See table - Filing Fees for Claims Filed by Associated Persons - in Exhibit 5).</p> <p>(2) If the claim does not request or specify money damages, the Director may determine that the filing fee should be more or less</p> | <p>10332. Schedule of Fees for Customer Disputes</p> <p>(a) At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration. Where multiple hearing sessions are required, the arbitrators may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedules below.</p> | <p>One of the most frequent criticisms of the current Code is that the fee schedules are difficult to understand, particularly with respect to what claimants must pay at the time of filing.</p> <p>Currently, claimants must pay a non-refundable filing fee, and an initial hearing session deposit that may be refundable under certain circumstances. In addition, parties also must pay hearing session fees for each hearing session. Although the filing fee and the initial hearing session deposit are both due upon filing, they are presented in the Code as separate fees, making it hard for some parties to understand the total amount due upon filing.</p> |

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| | <p>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.</p> <p>(b) Fees for Claims Filed by Members</p> <p>(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 13307.</p> <p>(See table – Fee for Claims Filed by Members – Exhibit 5).</p> <p>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.</p> <p>(c) Partial Refund of Filing Fee</p> | <p>(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.</p> <p>(c) The arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis, and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which case hearing session fees shall be computed as</p> | <p>To address this issue, the filing fee and the hearing session deposit have been combined into one single fee that is paid when a claim is filed. Although what is now the refundable hearing session deposit would no longer be paid separately, an amount equal to the current hearing session deposit or a portion thereof may be refunded if the case is settled at least 10 days prior to the hearing on the merits. (Under the current Code, the initial hearing session deposit may be refunded if the case is settled eight days prior to the hearing on the merits; this has been changed to 10 days as part of the overall effort to standardize the time frames used in the Code.)</p> <p>The consolidation of the filing fee and the hearing session deposit is intended</p> |

(1) If a claim is settled or

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| | <p>withdrawn more than 10 days before the date that the hearing on the merits under Rule 13600 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 13902. 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 13600 is scheduled to begin.</p> <p>(See table – Partial Refund for Settlement or Withdrawal More Than 10 Days Before Hearing on the Merits – Exhibit 5).</p> <p>or specify money damages and the Director determined that the hearing session fee should be a different amount than the amount specified in the schedule in Rule 13902, the amount of the refund will be the amount of the hearing session fee determined by the</p> | <p>provided in paragraph (d). The arbitrator(s) may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid. If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above. Amounts deposited by a party shall be applied against forum fees, if any. In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 10319,</p> | <p>to make it easier for claimants to understand how much they have to pay when they file a claim and what, if any, portion of that fee may be refunded.</p> <p>In addition, several sets of brackets in the filing fee schedule would be condensed. Currently, there are 14 separate fee brackets in the customer filing fee schedule. Some of the fees for different brackets are the same; others are separated by amounts ranging from \$25-\$100. The result is a schedule that is confusing and difficult to read. To simplify the schedule, the customer filing fee brackets would be reorganized as follows: the \$25,000-\$30,000 bracket (\$600) and the \$30,000-50,000 bracket (\$625) would be combined, and the filing fee for the new bracket would be \$600; and the \$1 million -</p> |

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| | <p>Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 13902.</p> <p>(d) Reimbursement of Filing Fees</p> <p>and the award, the party who paid for all or part of any filing fee paid.</p> | <p>10321, 10322, and 10326 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.</p> <p>(d) For claims filed separately which are subsequently joined or consolidated under Rule 10314(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such fees shall be borne.</p> <p>(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing</p> | <p>\$3 million bracket (\$1,700), the \$3 million - \$5 million bracket (\$1,800), the \$5 million - \$10 million bracket (\$1,800) and the over \$10 million bracket (\$1,800) would be combined, and the filing fee for the new bracket would be \$1,800.</p> <p>The changes would not result in a change in the total amount of fees paid by customers or associated persons when filing a claim, except that for claims of \$30,000 to \$50,000, the customer's overall filing fees would decrease by \$50, and for claims of \$1 million to \$3 million, the customer's overall filing fees would increase by \$100. Corresponding changes would be made to the member filing fee schedule.</p> |

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| | | <p>fee for a public customer shall be \$250 and the non-refundable filing fee for an industry party shall be \$500. The hearing session deposit to be remitted by a party shall be \$1,000 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.</p> <p>(f) The Association shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.</p> <p>(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an</p> | |

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| | | <p>assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.</p> <p>(h) Reserved</p> <p>(i) Reserved</p> <p>(j) Reserved</p> <p>(k) Schedule of Fees</p> <p>For purposes of the schedule of fees, the term "claim" includes Claims, Counterclaims, Third-Party Claims, and Cross-Claims. Any such claim made by a customer or associated person is treated as a customer claim for purposes of the schedule of fees. Any such claim made by a member is an industry claim.</p> | |

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| | | (See Customer or Associated Person Claimant Table in NASD Manual.) | |
| Member Surcharge | <p>13901. Member Surcharge</p> <p>(a) A surcharge in the amount indicated in the schedule below will be assessed against each member that:</p> <ul style="list-style-type: none"> • 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 | <p>10333. Member Surcharge and Process Fees</p> <p>(a) Member Surcharge</p> <p>(1) Each member that is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-Claim or Third-Party Claim, shall be assessed a surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding.</p> <p>(2) For each associated person who is named, the surcharge shall be assessed against the member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in</p> | No substantive change. |

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| | <p>under the Code. (See table – Member Surcharge – Exhibit 5).</p> <p>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.</p> <p>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 13300.</p> <p>assessed more than a single surcharge in any arbitration. The panel may not reallocate a surcharge paid by a member to any other party.</p> | <p>any arbitration proceeding.</p> <p>(3) The surcharge shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code. The Director will refund the surcharge paid by a member in an arbitration filed by a customer if the arbitration panel: (A) denies all of a customer's claims against the member or associated person; and (B) allocates all forum fees assessed pursuant to Rule 10332(c) against the customer. The Director may also refund or cancel the member surcharge in extraordinary circumstances.</p> <p>(See Table in NASD Manual.)</p> <p>(4) For purposes of this Rule, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Rule 10314 of the Code.</p> <p>(5) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable</p> | |

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| | <p>(e) The Director may also refund or waive the member surcharge in extraordinary circumstances.</p> | <p>surcharge shall be \$1,500 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.</p> | |
| <p>Hearing Session Fees, and Other Costs and Expenses</p> | <p>13902. Hearing Session Fees, and Other Costs and Expenses</p> <p>(a) Hearing Session Fees</p> <p>(1) 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.</p> <p>(See table – Hearing Session Fees – Exhibit 5).</p> <p>(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</p> | <p>10332. Schedule of Fees for Customer Disputes</p> <p>(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.</p> <p>(c) The arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing</p> | <p>See comments to Rule 13900.</p> <p><u>NASD did not intend to increase the charge for submitting a claim to arbitration. NASD is, therefore, amending Rule 13902(b) to clarify that the hearing session fee paid in the filing fee will be credited in the award to the party who paid the filing fee.</u></p> <p><u>Also, NASD does not believe it should be the arbiter between party and counsel regarding who owes money to whom. Thus, NASD is amending Rule 13902 to add subparagraph (e) to clarify that refunds will be paid</u></p> |

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| | <p>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.</p> <p>(c) 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 13312, 13313, or 13314, the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph.</p> <p>(b) Payment of Hearing Session Fees</p> <p>(d) The panel may assess the 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</p> | <p>session basis, and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which case hearing session fees shall be computed as provided in paragraph (d). The arbitrator(s) may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid. If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be</p> | <p><u>directly to the named parties, even if a non-party made a payment on behalf of the named parties.</u></p> |

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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
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| | <p>schedule to paragraph (a) of this rule.</p> <p>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.</p> <p>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.</p> <p>(c) Assessment of Other Costs and Expenses in Award</p> <p>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</p> | <p>assessed forum fees based on the customer claim under the procedure set out above. Amounts deposited by a party shall be applied against forum fees, if any. In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.</p> <p>(d) For claims filed separately which are subsequently joined or consolidated under Rule 10314(d), the hearing deposit and forum fees assessable per hearing session after joinder or</p> | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---------|--|---|----------|
| | <p>scope of the agreement of the parties, and which party or parties will pay those costs and expenses.</p> <p>(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal</p> <p>If a claim is settled or withdrawn:</p> <ul style="list-style-type: none"> • 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 13600 is scheduled to begin, parties that paid a filing fee under Rule 13900 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 13502, 13513, 13601, or 13606 in connection with such hearings. If a case is settled or withdrawn | <p>consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such fees shall be borne.</p> <p>(f) The Association shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.</p> <p>(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled</p> | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|--|---|---|----------|
| | <p>and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by Rule 13701(b).</p> <p><u>(e) Refund Payments</u></p> <p><u>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.</u></p> | <p>or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.</p> | |
| <p>Process Fees Paid by Members</p> | <p>13903. Process Fees Paid by Members</p> <p>(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:</p> <ul style="list-style-type: none"> • A non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 13403(b); and • A non-refundable hearing process fee, due when the parties are notified of the date and location of the hearing on | <p>10333. Member Surcharge and Process Fees</p> <p>(b) Prehearing and Hearing Process Fees</p> <p>(1) Each member that is a party to an arbitration proceeding in which more than \$25,000 is in dispute will pay:</p> <p>(A) a non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 10308(b)(5); and</p> | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---------|---|--|----------|
| | <p>the merits under Rule 13600, as set forth in the schedule below.</p> <p>(See table – Hearing Process Fee Schedule – Exhibit 5).</p> <p>(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.</p> <p>(c) The panel may not reallocate to any other party any prehearing and hearing process fees paid by a member.</p> | <p>(b) Process fees, including hearing parties are notified of the date and location of the first hearing session, as set forth in the schedule below.</p> <p>(2) If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy 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 proceeding.</p> <p>(3) The prehearing and hearing process fees shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code.</p> <p>(See Hearing Process Fee Schedule table in NASD Manual.)</p> | |

**COMPARISON CHART OF
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| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|----------------------|---|--|-------------------------------|
| <p>Awards</p> | <p>13904. Awards</p> <p>(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.</p> <p>(b) Unless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal.</p> <p>(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.</p> <p>(d) The panel shall endeavor to render an award within 30 business days from the date the record is closed.</p> | <p>10330. Awards</p> <p>(a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by applicable law. Such awards may be entered as a judgment in any court of competent jurisdiction.</p> <p>(b) Unless the applicable law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal.</p> <p>(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 counsel, on the same day. Methods the Director may use include, but are not limited to, registered or certified mail, hand delivery, and facsimile or other electronic</p> | <p>No substantive change.</p> |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---------|--|--|----------|
| | <p>(e) The award shall contain the following:</p> <ul style="list-style-type: none"> • 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 | <p>transmission.</p> <p>(d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.</p> <p>(e) The award shall contain the names of the parties, the name of counsel, if any, 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 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 concurring in the award.</p> <p>(f) All awards and their contents shall be made publicly available.</p> <p>(g) Fees and assessments imposed by the arbitrators</p> | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---------|--|---|----------|
| | <p>by the panel;</p> <ul style="list-style-type: none"> • 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. <p>(f) The award may contain a rationale underlying the award.</p> <p>(g) All awards shall be made publicly available.</p> <p>(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.</p> <p>(i) All monetary awards shall be paid</p> | <p>under Rules 10205 and 10332 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.</p> <p>(h) All monetary awards shall be paid within thirty (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: (1) if not paid within thirty (30) days of receipt, (2) if the award is the subject of a motion to vacate which is denied, or (3) as specified by the arbitrator(s) 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).</p> | |

**COMPARISON CHART OF
CURRENT AND PROPOSED NASD ARBITRATION CODES FOR INDUSTRY DISPUTES**

| SUBJECT | PROPOSED RULE | CURRENT RULE | COMMENTS |
|---------|--|--------------|----------|
| | <p>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:</p> <ul style="list-style-type: none"> • 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. <p>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).</p> | | |

NASD
CODE OF ARBITRATION PROCEDURE
FOR
INDUSTRY DISPUTES

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PART I INTERPRETIVE MATERIAL, DEFINITIONS, ORGANIZATION AND AUTHORITY

IM-13000. Failure to Act Under Provisions of Code of Arbitration Procedure for Industry 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 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; or

(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.

13100. Definitions

Unless otherwise defined in the Code, terms used in the Code 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 13302.

(f) Code

The term “Code” means the Code of Arbitration Procedure for Industry Disputes. For disputes involving customers, see the NASD Code of Arbitration Procedure for Customer 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 13600.

(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 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) Related Claim

For purposes of Rule 13803, the term "related claim" means any claim that arises out of the employment or termination of employment of an associated person.

(w) 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.

(x) Statement of Claim

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

(y) Statutory Employment Discrimination Claim

The term “statutory employment discrimination claim” means a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute.

(z) Temporary Injunctive Order

The term “temporary injunctive order” means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.

(aa) 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.

(bb) 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.

13101. Applicability of Code and Incorporation by Reference

(a) Applicability of Code

The Code applies to any dispute that is submitted to arbitration under the Code pursuant to Rules 13200, 13201, or 13202.

(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.

13102. 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.

13103. 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.

13104. 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.

13105. 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.

PART II GENERAL ARBITRATION RULES

13200. Required Arbitration

(a) Generally

Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among:

- Members;
- Members and Associated Persons; or
- Associated Persons.

(b) Insurance Activities

Disputes arising out of the insurance business activities of a member that is also an insurance company are not required to be arbitrated under the Code.

13201. Statutory Employment Discrimination Claims

A claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. If the parties agree to arbitrate such a claim, the claim will be administered under Rule 13802.

13202. Claims Involving Registered Clearing Agencies

If a registered clearing agency has entered into an agreement to use NASD's arbitration facilities and procedures, any dispute, claim or controversy involving that registered clearing agency, or participants, pledges or other persons using the facilities of the registered clearing agency will be arbitrated in accordance with such agreement and the rules of the registered clearing agency.

13203. 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.

13204. 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.

13205. Shareholder Derivative Actions

Shareholder derivative actions may not be arbitrated under the Code.

13206. 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.

13207. 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.

13208. Representation of Parties

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

13209. 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.

13210. Ex Parte Communications

(a) Except as provided in Rule 13211, 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.

13211. 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.

13212. 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.

13213. 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. In cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the dispute. In cases involving members only or more than one associated person, the Director will consider a variety of factors, including:

- The parties' signed agreement to arbitrate, if any;
- Which party initiated the transaction or business in issue; and
- The location of essential witnesses and documents.

(2) Before arbitrator lists are sent to the parties under Rule 13403, 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 13503.

(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 13902(c).

13214. Payment of Arbitrators

(a) Except as provided in paragraph (b) and Rule 13800, 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 13601; 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 13601(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 13800.

(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 13902(c).

PART III INITIATING AND RESPONDING TO CLAIMS

13300. 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 13401. 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.

13301. 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.

13302. 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 13307, 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.

13303. 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 13801.

(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.

13304. 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.

13305. 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.

13306. 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.

13307. 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 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.

13308. Loss of Defenses Due to Untimely or Incomplete Answer

(a) If a party fails to 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 13801.

(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.

13309. 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 13300 and 13301.

(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 13503. 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 13404(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 13503 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.

13310. 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 13306.

13311. 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.

13312. 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.

13313. 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.

13314. Combining Claims

Before ranked arbitrator lists are due to the Director under Rule 13404(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

13400. 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 13100 (p);
- A roster of public arbitrators as defined in Rule 13100 (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 non-public or public arbitrators, depending on composition of the panel under Rule 13402, but will only appear on one list in a case.

(c) Eligibility for Chairperson Roster

Arbitrators are eligible to serve as chairperson of panels submitted for arbitration under the Code 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.

13401. 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 13800.

(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.

(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.

13402. Composition of Arbitration Panels in Cases Not Involving a Statutory Discrimination Claim

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions

- If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the non-public chairperson roster described in Rule 13400(c), unless the parties agree in writing otherwise.
- If the panel consists of three arbitrators, all will be non-public arbitrators. One of the arbitrators will be selected from the non-public chairperson roster described in Rule 13400(c), unless the parties agree in writing otherwise.

(b) Other Disputes Between or Among Members and Associated Persons

- If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes, unless the parties agree in writing otherwise.
- If the panel consists of three arbitrators, one will be a non-public arbitrator and two will be public arbitrators. One of the public arbitrators will be selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes, unless the parties agree in writing otherwise.

13403. Generating and Sending Lists to the Parties

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) Disputes Between or Among Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions

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

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

- A list of 16 arbitrators from the NASD's non-public roster; and
- A list of eight non-public arbitrators from the NASD's non-public chairperson roster.

(3) If the panel consists of three arbitrators, the Neutral List Selection System will generate the non-public chairperson list first. Chair-qualified arbitrators who were not selected for the non-public chairperson list will be eligible for selection on the non-public list. An individual arbitrator cannot appear on both the non-public chairperson list and the non-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) Other Disputes Between or Among Members and Associated Persons

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

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

(c) 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 13404(c).

13404. Striking and Ranking Arbitrators

(a) Except for lists generated pursuant to Rule 13403(a)(2), 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) For lists generated pursuant to Rule 13403(a)(2), each separately represented party may strike up to eight of the arbitrators from the non-public list and up to four of the arbitrators from the non-public chairperson list for any reason by crossing through the names of the arbitrators. At least eight names must remain on the non-public list and at least four names must remain on the non-public chairperson list.

(c) 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.

(d) 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.

13405. 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.

13406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) Disputes Between Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions

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

(2) If the panel consists of three arbitrators, the Director will appoint a three-arbitrator panel consisting of:

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

(b) Other Disputes Between or Among Members and Associated Persons

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

(2) If the panel consists of three arbitrators, the Director will appoint a three-arbitrator panel consisting of:

- The highest-ranked available arbitrator from the combined non-public arbitrator list;
- The highest-ranked available arbitrator from the combined public arbitrator list; and
- The highest-ranked available arbitrator from the combined public 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 13100 (p)(2) or (3), unless the parties agree otherwise. The Director will provide the parties information about the arbitrators as provided in

Rule 13403 and the parties will have the right to challenge the arbitrators as provided in Rule 13410.

(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.

13407. 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 13404. 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 13405. 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 13404, 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 13503 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 13410.

13408. 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.

(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.

13409. 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.

13410. 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.

(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 13408 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).

13411. 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 13403, and the parties shall have the right to object to the arbitrator as provided in Rule 13410.

(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 13100 (p)(2) or (3), unless the parties agree otherwise.

13412. 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.

13413. 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.

13414. 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

13500. 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.

13501. 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 13503, prehearing conferences may be held before a single arbitrator, generally the chairperson.

13502. Recording Prehearing Conferences

(a) Except as provided in Rule 13504, 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.

13503. 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 13504, 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 13309(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 Rule 13309(c) without waiving any rights or objections under the Code.

(b) Responding to Motions

Except as provided by Rule 13504, 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 13203 and removal of an arbitrator under Rule 13410.

(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 13409 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 13206, or to decide a claim or arbitration before a hearing under Rule 13504, unless the Code provides or the parties agree otherwise.

13504. Motions to Decide Claims Before a Hearing on the Merits

(a) Except as provided in Rule 13206, 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 13212 if it determines that a party filed a motion under this rule in bad faith.

13505. 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.

13506. Discovery Requests

(a) Requests for Documents or Information

Parties may request 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.

(b) Making Discovery Requests

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 should be specific and relate to the matter in controversy.

13507. Responding to Discovery Requests

(a) Unless the parties agree otherwise, within 60 days from the date a discovery request 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 13508.

(b) A party must act in good faith when complying with paragraph (a) 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) If a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled “redacted.”

13508. Objecting to Discovery Requests; Waiver of Objection

(a) If a party objects to producing any document or information requested under Rule 13506, 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.

13509. 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 Rules 13506 or 13507; or
- Objected to the production of documents or information under Rule 13508.

(b) Motions to compel discovery must be made, and will be decided, in accordance with Rule 13503. Such motions must include the disputed document request, a copy of any objection thereto, and a description of the efforts of the moving party to resolve the issue before making the motion.

13510. 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;
- In cases involving claims of statutory employment discrimination, if necessary and consistent with the expedited nature of arbitration; and
- If the panel determines that extraordinary circumstances exist.

13511. 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 13212(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 13212(c) for intentional and material failure to comply with a discovery order of the panel if prior warnings or sanctions have proven ineffective.

13512. 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.

13513. Authority of Panel to Direct Appearances of Associated Persons 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.

13514. 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

13600. Required Hearings

(a) Hearings will be held, unless:

- The arbitration is administered under Rule 13800 or Rule 13801;
- 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.

13601. 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 13902. 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.

13602. 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.

13603. 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.

13604. 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.

13605. Witness Oath

All witnesses must testify under oath or affirmation.

13606. 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.

13607. 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.

13608. 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.

13609. 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

13700. 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 13206 or Rule 13504; or
- On its own initiative under Rule 13212(c) or Rule 13601(c).

13701. 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.

13702. 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; DEFAULT PROCEEDINGS; STATUTORY EMPLOYMENT DISCRIMINATION CLAIMS; AND INJUNCTIVE RELIEF

13800. 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 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

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 13401, the remaining arbitrators will be appointed by the Director in accordance with Rule 13406(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.

13801. 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.

13802. Statutory Employment Discrimination Claims

(a) Applicability of Rule

This rule applies to arbitrations involving a claim of statutory employment discrimination as defined in Rule 13100 (y). Except as otherwise provided in this rule, all provisions of the Code apply to such arbitrations.

(b) Number of Arbitrators

(1) Claims of \$100,000 or Less

If the amount of a claim in a case involving an employment discrimination claim is \$100,000 or less, the panel will consist of one arbitrator.

(2) Claims of More Than \$100,000

If the amount of a claim in a case involving an employment discrimination claim is more than \$100,000, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

(c) Composition of Panel

(1) One Arbitrator

If the panel consists of one arbitrator, the arbitrator will be a public arbitrator who will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise.

(2) Three Arbitrators

If the panel consists of three arbitrators, the arbitrators will all be public arbitrators, one of whom will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise. The arbitrator who meets the criteria in paragraph (c)(3) will serve as chairperson of the panel.

(3) Special Statutory Discrimination Claim Qualifications

A single arbitrator or chairperson of a three-arbitrator panel in a case involving a statutory discrimination claim must have the following qualifications:

- (A) law degree (Juris Doctor or equivalent);
- (B) membership in the Bar of any jurisdiction;
- (C) substantial familiarity with employment law; and
- (D) ten or more years of legal experience, of which at least five years must be in either:
 - law practice;
 - law school teaching;
 - government enforcement of equal employment opportunity statutes;
 - experience as a judge, arbitrator, or mediator; or
 - experience as an equal employment opportunity officer or in-house counsel of a corporation.

In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years. For purposes of this rule, the term "primarily" shall be interpreted to mean 50% or more of the arbitrator's business or professional activities within the last five years.

(4) Waiver of Special Qualifications

If all parties agree, after a dispute arises, they may waive any of the qualifications set forth in paragraph (A) or (B) above.

(d) Awards

The panel may award any relief that would be available in court under the law. The panel must issue an award setting forth a summary of the issues, including the type(s) of dispute(s), the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).

(e) Attorneys' Fees

The panel may provide for reasonable attorneys' fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law.

13803. Coordination of Statutory Employment Discrimination Claims Filed in Court and in Arbitration

(a) Option to Combine Related Claims in Court

- (1) (A) If a current or former associated person files a statutory discrimination claim in court against a member or its associated persons, and asserts related

claims in arbitration at NASD against some or all of the same parties, a respondent who is named in both proceedings may, upon motion, compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.

(B) The respondent must notify the claimant in writing, before the respondent's time to answer has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to compel the claimant to assert related claims in court, except as provided in paragraph (b).

(2) (A) If a member or current or former associated person ("party") has a pending claim in arbitration against a current or former associated person and the current or former associated person thereafter asserts a related statutory discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.

(B) The party must notify the current or former associated person in writing, before filing an answer to the complaint in court, that it is exercising this option and must file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.

(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.

(b) Option Extended When Claim is Amended

(1) If the claimant files an amended statement of claim adding new claims not asserted in the original statement of claim, a respondent named in the amended statement of claim may, upon motion, compel the claimant to assert all related claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent that the court will accept jurisdiction over the related claims, even if those related claims were asserted in the original statement of claim.

(2) The respondent must notify the claimant in writing, before the time to answer the amended statement of claim has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer to the amended statement of claim without having exercised this option, it shall have waived its right to compel the claimant to assert related claims in court.

(c) Requirement to Combine All Related Claims

If a party elects to require a current or former associated person to assert all related claims in court, the party must assert in the same court proceeding all related claims that it has against the associated person to the full extent to which the court will accept jurisdiction over the related claims.

(d) Right of Respondent to Remain in Arbitration

(1) If there are multiple respondents and a respondent has exercised an option under paragraph (a) or (b), but another respondent wishes to have the claims against it remain in arbitration, then any remaining party may apply for a stay of the arbitration proceeding.

(2) If a panel has not been appointed, the Director will appoint a single arbitrator to consider the application for a stay. The single arbitrator shall be selected using the Neutral List Selection System and is not required to have the special employment arbitrator qualifications described in Rule 13801(c).

(3) If a panel has been appointed, the panel must stay the arbitration unless the panel determines that the stay would result in substantial prejudice to one or more of the parties.

(e) Pre-Filing Certification

(1) Before or at the same time that the statement of claim is filed, a claimant may file with the Director a certification that it communicated unsuccessfully with the respondent concerning the consolidation of all claims in court prior to filing a statement of claim, in an effort to save the expense of arbitration fees. A copy of such certification must be sent to the respondent at the same time and in the same manner as the filing with the Director.

(2) If, after a certification has been filed, all the respondents later exercise the option to consolidate all claims in court, the Director will return the claimant's filing fee, but will retain the member surcharge and any accrued member process fees. If there are any remaining respondents, the filing fee will be adjusted to correspond to the claims against the remaining respondents.

(f) Motion to Compel Arbitration

If a member or a current or former associated person files in court a claim against a member or a current or former associated person that includes matters that are subject to mandatory arbitration, either by the rules of NASD or by private agreement, the defending party may, upon motion, compel arbitration of the claims that are subject to mandatory arbitration.

13804. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

(a) Temporary Injunctive Orders

(1) In industry or clearing disputes required to be submitted to arbitration under the Code, parties may seek a temporary injunctive order from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief pursuant to paragraph (b) of this rule has not yet begun.

(2) A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration under the Code must, at the same time, file with the Director a statement of claim requesting permanent injunctive and all other relief with respect to the same dispute in the manner specified under the Code. The party seeking temporary injunctive relief must also serve the statement of claim requesting permanent injunctive and all other relief on all other parties in the same manner and at the same time as the statement of claim is filed with the Director.

(3) Filings and service under this rule must be made by facsimile, overnight delivery service or messenger. Service must be made on all parties at the same time and in the same manner, unless the parties agree otherwise. A party obtaining a court-issued temporary injunctive order must notify the Director and the other parties of the issuance of the order within one business day.

(b) Hearing on Request for Permanent Injunctive Relief

(1) Scheduling of Hearing

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief will begin within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. Unless the parties agree otherwise, a hearing lasting more than one day will be held on consecutive days when reasonably possible. The Director will provide to all parties notice of the date, time and place of the hearing at least three days prior to the beginning of the hearing.

(2) Composition of Arbitration Panel

The hearing on the request for permanent injunctive relief will be heard by a panel of three arbitrators. The composition of the panel will be determined in accordance with Rule 13402.

(3) Selection of Arbitrators and Chairperson

(A)

(i) In cases in which all of the members of the panel are non-public, the Director will generate and provide to the parties a list of seven arbitrators from NASD's roster of non-public arbitrators. The Director will send to the parties the employment history for the past 10 years for each listed arbitrator and other background information. At least three of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on

the consolidated list, subject to the arbitrators' availability and disqualification.

(B)

(i) In cases in which the panel consists of a majority of public arbitrators, the Director will generate and provide to the parties a list of nine arbitrators from NASD's roster of arbitrators. The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information. At least a majority of the arbitrators listed shall be public arbitrators, and at least four of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director will combine the parties' rankings, and will appoint arbitrators based on the order of rankings on the combined list, subject to the arbitrators' availability and disqualification.

(C)

(i) Each party must inform the Director of its preference of chairperson of the panel by the close of business on the next business day after receiving notice of the panel members.

(ii) If the parties do not agree on a chairperson within that time, the Director shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the Director will select a public arbitrator as chairperson. Whenever possible, the Director will select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest.

(D) The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this rule and the Code to facilitate the appointment of panels and the selection of chairperson.

(4) Applicable Legal Standard

The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.

(5) Effect of Pending Temporary Injunctive Order

Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

(6) Fees, Costs and Expenses, and Arbitrator Honorarium

(A) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the request for permanent injunctive relief. The panel may reallocate such costs and expenses among the parties in the award.

(B) Each party seeking a temporary injunctive order in court pursuant to this rule must pay a non-refundable surcharge of \$2,500 at the time the party files its statement of claim and request for permanent injunctive relief. In the award, the panel may decide that one or more parties must reimburse a party for part or all of the surcharge. The surcharge is in addition to all other non-refundable filing fees or costs that are required under the Code.

(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this rule shall receive an honorarium of \$375 for each single session, and \$700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of \$300 for each single session, and \$600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to Rule 13214. The panel may reallocate such amount among the parties in the award.

(c) Hearing on Damages or Other Relief

(1) Upon completion of the hearing on the request for permanent relief, the panel may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held before the same panel and which shall include, but not be limited to, the same record.

(2) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in any subsequent hearings on damages or other relief. The panel may reallocate such costs and expenses among the parties in the award.

PART IX FEES AND AWARDS

13900. Fees Due When a Claim Is Filed

(a) Fees for Claims Filed by Associated Persons

(1) Associated persons 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 13307.

Filing Fees for Claims Filed by Associated Persons

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Filing Fee</u> |
|---|-------------------|
| \$.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 13307.

Fees for Claims Filed by Members

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Filing Fee</u> |
|--|--------------------------|
| \$.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 13600 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 13902. 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 13600 is scheduled to begin.

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

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Refund</u> |
|--|----------------------|
| \$.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 13902, 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 13902.

(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.

13901. Member Surcharge

(a) 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

| <u>Amount in Dispute</u> (exclusive of interest and expenses) | <u>Surcharge</u> |
|--|-------------------------|
| 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 |

(b) 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.

(c) 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 13300.

(d) 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.

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

13902. 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 13312, 13313, or 13314, the amount of those claims will be aggregated and they will be treated as one claim for purposes of this paragraph.

(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 13600 is scheduled to begin, parties that paid a filing fee under Rule 13900 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 13502, 13513, 13601, or 13606 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 13701(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.

13903. 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 13403(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 13600, as set forth in the schedule below.

Hearing Process Fee Schedule

| <u>Amount of Claim</u> (exclusive of interest and expenses) | <u>Hearing Process Fee</u> |
|--|-----------------------------------|
| \$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.

13904. 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).

On January 16, 2004, NASD filed SR-NASD-2004-011 to reorganize the industry portion of the NASD Code of Arbitration Procedure (Code), simplify the language, codify current practices, and implement several substantive changes. NASD filed Amendment No. 1 to the proposed rule change on February 26, 2004. Amendment No. 2 was filed on January 3, 2005, and Amendment No. 3 on April 8, 2005. Amendment No. 4 was filed on June 10, 2005.

NASD is filing this partial Amendment No. 5 to make the following changes to the rule filing:

1. On page 4 of Amendment No. 4, under “Procedures of the Self Regulatory Organization,” please amend the second paragraph as follows (new language is underlined, deletions in brackets):

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the Notice to Members announcing Commission approval. Once approved, the Customer Code will apply to: 1) all claims filed on or after the effective date, and 2) all claims in which a new or amended list of arbitrators has not been generated and sent to the parties. Under the first criterion, if a claim is filed on or after the effective date of the Customer Code, the Customer Code will govern all aspects of the arbitration.

Under the second criterion, if a claim was filed before the effective date, but the initial or amended list has not been generated and sent to parties by the effective date, the Customer Code will govern the list selection process only, including appointment, removal, and replacement, if necessary. The current Code will control the remaining aspects of the arbitration, unless all the parties agree in writing to permit the claims to be governed by the Customer Code in its entirety (except for provisions that would be moot as a result of the status of the case). For cases in which a list was generated under the current Code, but a completely new list is required to be sent to the parties after the effective date of the Customer Code, the subsequent, new list will be generated under the Customer Code.¹ The current Code will continue to control the remaining aspects of the arbitration, unless the parties agree otherwise.

NASD believes that using list generation as the event for determining the effective dates of certain provisions of the Customer Code is consistent with the approach taken when the Neutral List Selection System (NLSS) was introduced and approved in 1998.² At that time, NASD made list selection changes effective based on the status of list preparation. NASD believes that a similar approach is appropriate under the current proposal, because it will provide the benefits of the

¹ For example, if a panel ordered a change of venue after the effective date of the Customer Code, the new list would be generated under the Customer Code, even if the original list were generated under the Code.

² See File No. SR-NASD-98-48, Amendment No. 4 to the Proposed Rule Change Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers.

new list selection method to the greatest number of parties as quickly as possible. Moreover, NASD is planning to activate MATRICS,³ a Web-based arbitration case management system, to implement the provisions of the Customer Code. Once MATRICS becomes operational, the current version of NLSS will no longer be functional; thus, it will not be possible to generate lists of arbitrators using the provisions of the current Code. For these reasons, NASD believes that the proposed effective date criteria for the Customer Code represent the most efficient way to implement the proposal without disrupting the arbitration process for the parties, arbitrators or staff.

2. On pages 26-27 and 57-58 of Amendment No. 4, under “Dispositive Motions (Proposed Rule 13504),” please amend the second paragraph as follows (new language is underlined, deletions in brackets):

Generally, NASD believes that parties have the right to a hearing in arbitration. However, NASD also acknowledges that in certain extraordinary circumstances it would be unfair to require a party to proceed to a hearing. Specifically, the proposed rule would:

- Provide that, except for motions relating to the eligibility of claims under the Code’s six year time limit, motions that would resolve a claim before a hearing on the merits are discouraged, and may only be granted in extraordinary circumstances;
- Require that a prehearing conference before the full panel must be held to discuss the motion before the panel could grant it; and
- Allow the panel to issue sanctions against a party for making a dispositive motion in bad faith.

For purposes of this rule, if a party demonstrates affirmatively the legal defenses of, for example, accord and satisfaction, arbitration and award, settlement and release, or the running of an applicable statute of repose, the panel may consider these defenses to be extraordinary circumstances. In such cases, the panel may dismiss the arbitration claim before a hearing on the merits if the panel finds that there are no material facts in dispute concerning the defense raised, and there are no determinations of credibility to be made concerning the evidence presented.

NASD believes that this rule proposal, which was developed over several years with input from [industry and] public, industry, and arbitrator/mediator

³ NASD Dispute Resolution is upgrading its computer technology platform, in what is known as the MATRICS Computer Project. MATRICS stands for Mediation and Arbitration Tracking and Retrieval Interactive Case System. MATRICS will replace two legacy case management systems: CRAFTIS and NLSS. CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration functions. It uses an old technology platform and is not Web-based. NLSS is the computer program NASD Dispute Resolution uses to appoint arbitrators.

members of the NAMC, will provide necessary guidance to parties and arbitrators, and make the administration of arbitrations more uniform and transparent. NASD believes that the rule strikes the appropriate balance between allowing the dismissal of claims in limited, extraordinary circumstances and reinforcing the general principle that parties are entitled to a hearing in arbitration.

3. On pages 34, 64 and 66 of Amendment No. 4, please make the following changes:

On page 34, under “Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)” (new language is underlined, deletions in brackets):

[Not applicable.]

NASD requests that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. NASD believes that the proposed changes in Amendment No. 5 are nonsubstantive because they do not change the purpose or intent of the proposed rules. The proposed changes address issues raised by commenters and will make the Customer Code easier to understand and use, thereby making the arbitration process more transparent for parties. Moreover, NASD believes that the proposed changes will provide additional guidance to parties, arbitrators and staff concerning the procedures of its forum, which should result in the efficient and economical administration of claims.

For the reasons above, and because NASD believes the proposed changes do not significantly affect the protection of investors or the public interest or impose any significant burden on competition, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

On page 64, under Section III, “Date Of Effectiveness Of The Proposed Rule Change And Timing For Commission Action,” insert the following as the first paragraph (new language is underlined, deletions in brackets):

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit users of NASD’s arbitration forum. First, the proposed changes in Amendment No. 5 are nonsubstantive because they do not change the purpose or intent of the proposed rules. Second, the proposed changes address issues raised by commenters and will make the Customer Code easier to

understand and use, thereby making the arbitration process more transparent for parties. Last, the proposed changes provide additional guidance to parties, arbitrators and staff concerning the procedures of its forum, which should result in the efficient and economical administration of claims.

On pages 65-66, under Section IV, "Solicitation of Comments," insert the following sentence as the penultimate paragraph of the section (new language is underlined, deletions in brackets):

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.