

mediations. Below is the text of the proposed rule change. Proposed new language is in *italics*.

#### Code of Arbitration Procedure

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#### Record of Proceedings

Sec. 37. (a) A verbatim record by stenographic reporter or 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 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.

(b) *A verbatim record of mediation conducted pursuant to Part IV of this Code shall not be kept.*

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#### Schedule of Fees for Customer Disputes

Sec. 43.

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(i) *Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$150.*

(j) *The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:*

(1) *Initial Mediation Session: \$600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and*

(2) *Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed to by the parties and the mediator, per hour or portion thereof.*

#### Schedule of Fees for Industry and Clearing Controversies

Sec. 44.

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(j) *Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$250.*

(k) *The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:*

(1) *Initial Mediation Session: \$600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and*

(2) *Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed to by the parties and the mediator, per hour or portion thereof.*

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Sec. 47 Reserved.<sup>3</sup>

Sec. 48 Reserved.

Sec. 49 Reserved.

#### PART IV—MEDIATION RULES

##### Scope and Authority

Sec. 50. (a) *The NASD Mediation Procedures ("Procedures") set forth in this Part shall apply to the mediation of any dispute, claim or controversy ("matter") administered by the Association.*

(b) *A Director of Mediation shall be designated by the Association to administer mediations under these Procedures. The Director will consult the Association's National Arbitration Committee on the administration of mediations and the Committee shall, as necessary, make recommendations to the Director and recommend to the Board of Governors amendments to the Procedures. The duties and functions of the Director may be delegated as appropriate. For purposes of this Part, the term "Director" refers to the Director of Mediation.*

(c) *Neither the NASD nor any mediator appointed to mediate a matter pursuant to these Procedures shall have any authority to compel a party to participate in a mediation or to settle a matter.*

##### Submission of Eligible Matters

Sec. 51. Any matter eligible for arbitration under this Code, any part thereof, or any issue related to the matter, including procedural issues, may be submitted for mediation under

<sup>3</sup>These new "reserved" sections are being added to provide room for additional new provisions of the Code that should precede the mediation provisions.

these Procedures upon the agreement of all parties. A matter will be deemed submitted when the Director has received an executed Submission Agreement for each party. The Director shall have the sole authority to determine if a matter is eligible to be submitted for mediation.

##### Arbitration Proceedings

Sec. 52. Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code.

##### Mediator Selection

Sec. 53. (a) A mediator may be selected: (1) by the parties from a list supplied by the Director; (2) by the parties from a list or other source of their own choosing; or (3) by the Director if the parties do not act to select a mediator after submitting a matter to mediation.

(b) With respect to any mediator assigned or selected from a list provided by the Association, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Any mediator selected or assigned to mediate a matter shall comply with the provisions of Sections 23(a), (b) and (c) of the Code, unless, with respect to a mediator selected from a source other than the Association's list, the parties elect to waive such disclosure.

(c) No mediator shall be permitted to serve as an arbitrator of any matter pending in NASD arbitration in which he served as mediator, nor shall the mediator be permitted to represent any party or participant to the mediation in any subsequent NASD arbitration proceeding relating to the subject matter of the mediation.

##### Limitation on Liability

Sec. 54. The Association, its employees, and any mediator named to mediate a matter under this Part, shall not be liable for any act or omission in connection with a mediation administered pursuant to these Procedures.

##### Mediation Ground Rules

Sec. 55. (a) The following Ground Rules are established to govern the mediation of a matter. The parties to a mediation may agree to amend any or all of the Ground Rules at any time. The Ground Rules are intended to be standards of conduct for the parties and the mediator.