including: (1) Arbitrator selection; (2) additional fees for arbitrator compensation; (3) whether the parties will use the prehearing discovery rules included in these large and complex case rules, whether they will use the prehearing discovery rules elsewhere in the Code, or some other prehearing procedures; and (4) whether the parties are contracting for the arbitrators to provide a written statement of reasons. The pamphlet also will disclose that, if the parties fail to address any of these issues, the issues may need to be resolved by the arbitration department or the arbitrators, as appropriate under the assignment of responsibilities under the large and complex case rules and other Code provisions. The pamphlet also will highlight the fact that a significant feature of the large and complex rules is that arbitrators are authorized to dismiss the case, or any part of it, on the written submissions of the parties without any oral hearing.

D. Appointment of Arbitrators

Section 46(c) provides for the appointment of a panel of three arbitrators to hear eligible matters. At least one arbitrator must be an attorney.

The NASD intends to establish a pool of separately qualified arbitrators to hear many of the cases under the large and complex case rules.13 The NASD also indicated that it will also draw from its regular pool of arbitrators as necessary to fill panels for eligible matters. Moreover, in order to attract arbitrators to serve on panels hearing eligible matters, Section 46 contains a mechanism to provide additional compensation for those arbitrators. Section 46(c)(4) provides that prior to the selection of the arbitrators, the parties may agree to pay, and that the Director of Arbitration has discretion to assess, compensation to be paid to the arbitrators by the parties in addition to the honorarium specified by the Board of Governors. The additional compensation would reflect the magnitude and complexity of the matter arbitrated under the alternate large and complex case rules. Under the provision, the amount of any such additional compensation also must be

decided before the selection of the arbitrators. Section 46(a)(4) requires parties to pay arbitrator fees prior to the first hearing or the next scheduled hearing, as applicable.

Under the procedures established by the NASD, the staff member assigned to conduct the administrative conference must discuss the availability of arbitrators with the parties at the administrative conference and obtain the agreement of the parties on how to proceed if availability is a problem. The parties may, for instance, make further proceedings under the large and complex case rules contingent upon the availability of specially qualified arbitrators or upon specific compensation arrangements.

Finally, while the rules contemplate that eligible matters will be heard by panels of three arbitrators, at least one of whom is an attorney, Section 46(c)(1) permits the parties to agree to submit a matter to a single mutually acceptable arbitrator.

A panel may be appointed in one of three ways: (1) Pursuant to the usual procedures in Section 19 of the Code, if the parties cannot agree on another method; (2) pursuant to a procedure set forth in Section 46(c)(3); or (3) pursuant to a procedure agreed to by the parties.

The procedure set forth in Section 46(c)(3) provides that each party simultaneously will be provided with two lists of arbitrators: the first list will be composed of securities industry arbitrators and the second list will be composed of public arbitrators. The lists will include certain biographical information, with other information available on request. Within 20 days of the transmittal of these lists, each party may challenge peremptorily or for cause any or all arbitrators on the lists and must rank the remaining arbitrators on its lists in order of preference with "one" (1) indicating the most preferred arbitrator. Any party failing to challenge, rank and return the lists will be considered to have accepted all listed arbitrators.

After receiving the lists from the parties the Director of Arbitration will prepare two consolidated lists (one of public arbitrators and one of industry arbitrators) of the arbitrators by combining the parties' lists of acceptable arbitrators and consolidating the rankings. Under the provision, this is accomplished by preparing a combined list composed solely of those arbitrators acceptable to all parties and then adding the number rankings assigned by each party together to achieve a consolidated rank.

	Party A	Party B	Con- solidat- ed rank
Arbitrator #1	1	3	4
Arbitrator #2	3	2	5
Arbitrator #3	4	1	5
Arbitrator #4	2	5	7
Arbitrator #5	5	4	9

In order to ensure that a panel has at least one attorney, the Director will extend the first invitations to the highest ranking attorneys on either list. If each attorney accepts, the NASD will select the attorney who received a higher ranking from a party. Once an attorney has been named to the panel, the Director will continue to extend invitations to arbitrators in the order of their consolidated rank until the panel has been filed by the required number of public and industry arbitrators. Under the provision, if a panel cannot be appointed from the consolidated lists, the remainder of the panel will be appointed under the regular arbitration provision in Section 19 of the Code.

Finally, pursuant to Section 46(c)(3)(E), if a challenge for cause is successful after the appointment of the panel is complete, Section 46(c)(3)(E) permits the Director of Arbitration to reopen the selection process at the point where the last arbitrator was appointed and continue the process as through the challenged arbitrator had never been appointed.

E. Preliminary Hearing

Section 46(d) provides that the arbitrators will convene a preliminary hearing promptly following the appointment of the panel. Once the arbitrators convene the preliminary hearing, the Director of Arbitration will appoint a single arbitrator to preside over the preliminary hearing and the presiding arbitrator will have the power to act on behalf of the panel on any appropriate matter arising before or after the preliminary hearing. The presiding arbitrator will also have unlimited discretion to refer any such matter to the full panel for consideration. Matters which may be brought to the presiding arbitrator for resolution include: stipulations as to uncontested facts, exchanging and premarking exhibits to be offered at the hearing, and the schedule, form, scope and use of sworn statements and depositions. In addition, the presiding arbitrator may consider any other matter ripe for resolution at the prehearing stage, including encouraging medication or other nonadjudicative resolution of the matter.

¹³ The NASD has indicated that it intends to identify arbitrators qualified to preside over such cases on the basis of training, experience, varied knowledge and expertise. Qualifications for inclusion in the pool may be based on, among others, the following factors: (1) Attendance and successful completion of course(s) relating to large and complex cases; (2) experience and regular service as an arbitrator; (3) knowledge or expertise in the subject matter or technical aspects of the dispute; (4) length of service as an Association arbitrator; and (5) professional and business expertise.