

**Phlx Memo No. 192-07**

**RC No: NASD- 2006-136**

MEMORANDUM

To: Members and Member Organizations  
From: Legal Department  
Date: January 25, 2007  
Re: NASD Code of Arbitration

SR-NASD-2006-136-Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical and Grammatical Corrections to Rule 10308

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Pursuant to Phlx Rule 950, Section 44, the Exchange has outsourced its arbitration and mediation program to NASD Dispute Resolution. The purpose of this memo is to update you as to proposed amendments to the NASD Code of Arbitration Procedure.

On December 28, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend paragraph (a)(5)(B) of Rule 10308 of the NASD Code of Arbitration Procedure to delete unnecessary cross references in the definition of "immediate family member," and to correct a grammatical error relating to arbitration fees applicable to certain statutory employment discrimination claims.

NASD believes that the cross-references to "a person engaged in the conduct or activities described in paragraph (a)(4)(A) through (D)" in the definition of immediate family member in paragraphs (a)(5)(B)(i)-(iv) of Rule 10308 are redundant when read in conjunction with other provisions of the rule. For example, Rule 10308(a)(5)(A)(vii) provides that a person may be a public arbitrator if he or she "is not the spouse or immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)." The definition of "immediate family member" in Rule 10308(a)(5)(B) states, in part, "For the purpose of this Rule, the term "immediate family member" means \* \* \* (i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)." Thus, both the rule and the definition refer redundantly to "a person [who is] engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)."

Moreover, new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308 were recently added to provide that persons who are otherwise qualified may not serve as public

arbitrators if they have certain family members who are employed by, or serve as officers or directors of, entities in a control relationship with a broker-dealer. In these instances, there is no need to refer to paragraphs (a)(4)(A) through (D) as those paragraphs are not at issue. Rather, what is important is the family relationship itself.

For these reasons, NASD proposes to amend the examples of family relationships in the definition of "immediate family member" in paragraphs (a)(5)(B)(i)-(iv) of Rule 10308 in a non-substantive way to retain the relationships themselves but omit the references to paragraphs (a)(4)(A) through (D) of the rule. As noted above, because this reference is in Rule 10308(a)(5)(A)(vii), arbitrators who have an immediate family member engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) of the rule will continue to be ineligible to serve as public arbitrators. Arbitrators, who do not have immediate family members engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) of the rule, still may be subject to new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308, which governs public arbitrators.

In deleting the references to paragraphs (a)(4)(A) through (D), discussed above, NASD has rearranged phrases to provide additional clarity. In so doing, NASD does not intend to make any change in the substance of the definitions or in how they are construed.

Finally, NASD proposes to correct a grammatical error in Rule 10308(a)(5)(B) by replacing the term "for the purpose of" with the more common phrase "for purposes of," which is used in the remainder of the rule.

The text of the amended rule is set forth below. If you have any questions regarding this approved rule change, or would like a complete copy of this proposed filing, or further questions regarding the NASD Dispute Resolution Process, please click on the NASD Dispute Resolution website at [www.nasdadr.com](http://www.nasdadr.com). If you need additional help, please contact Scott Donnini at (215) 496-5358.

### **10308. Selection of Arbitrators**

#### (a) Definitions

(1) through (4) No change.

(5) "public arbitrator"

(A) No change.

(B) For [the] purposes of this Rule, the term "immediate family member" means:

(i) [The] *a person's* parent, stepparent, child, or stepchild[, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(ii) A member of [the] *a person's* household [of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(iii) *An individual to whom* a person [who receives] *provides* financial support of more than 50 percent of *the individual's* annual income [from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)]; or

(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)].

(6) through (7) No change.

(b) through (f) No change.