

Phlx Memo No. 1093-07

RC No: NASD- 2007-22

MEMORANDUM

To: Members and Member Organizations

From: Legal Department

Date: May 8, 2007

Re: NASD Code of Arbitration
SR-NASD-2007-22 Notice of Filing and Order Granting Immediate
Effectiveness of Proposed Rule Change To Make Technical Amendments
to the Code of Mediation Procedure

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.

NASD Dispute Resolution has received approval on April 11, 2007 to amend the Code of Mediation Procedure to re-number Rules 10401 through 10410 and update cross references within the re-numbered rules.

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations to use "plain English" in disclosure documents and other materials used by investors. In response, NASD undertook to rewrite the NASD Code of Arbitration Procedure ("old Code") in "plain English." This undertaking became the Code Revision Project ("Project").

NASD began to implement the Project in 2003 when it filed with the SEC a proposed rule change to the old Code to reorganize the rules, simplify the language, codify current practices, and implement several substantive changes. The proposal reorganized NASD's old dispute resolution rules (Rules 10000 *et seq.*) 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 three new Codes would replace the old Code in its entirety.

On October 31, 2005, the SEC approved the Mediation Code. It became effective on January 30, 2006. On January 24, 2007, the SEC approved the Customer Code and

Industry Code. The Customer and Industry Codes will become effective on April 16, 2007.

Because the Mediation Code became effective before the Customer and Industry Codes were approved, NASD implemented the Mediation Code by replacing the old rules governing mediation (Rules 10400 *et seq.*) in the old Code with the rules of the Mediation Code. To minimize confusion and to assist the users of the dispute resolution forum, NASD re-numbered the rules of the Mediation Code so that they would be consistent with the numbering in the old Code, which was still in effect at the time the Mediation Code became effective. In replacing the old rules with those of the Mediation Code, NASD changed cross-references to proposed rules of the Customer and Industry Codes to applicable rules of the old Code, and removed rule language that was based on the proposed codes.

Under this proposed rule change, NASD is proposing to remove Rules 10401 through 10410 of the Mediation Code from the old Code and re-number them so that the Mediation Code becomes a separate procedural code, as proposed and approved by the SEC. NASD also is proposing to change cross-references to applicable rules of the Customer and Industry Codes, and re-insert definitions of "NASD Customer Code" and "NASD Industry Code" in Rules 14100(g) and Rules 14100(h) respectively, which had been reserved until the new Codes were approved.

The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, and at the Commission's Public Reference Room.

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. If you need additional help, please contact Scott Donnini at (215) 496-5358.