



Phlx Memo No. 2545-07

RC No: NASD- 2006-109

MEMORANDUM

To: Members and Member Organizations
From: Legal Department
Date: October 15, 2007
Re: FINRA Code of Arbitration

SR-NASD-2006-109-Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Relating to Representation of Parties in Arbitration and Mediation

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

On September 14, 2006, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA")), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") (n/k/a, FINRA Dispute Resolution, Inc.), filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change relating to representation of parties in arbitration and mediation. On November 9, 2006 and February 23, 2007, NASD Dispute Resolution submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on April 13, 2007. The Commission received five comments on the proposal. The Commission has approved this proposed rule change.

First, the proposed rule change codifies current practice by explicitly stating that parties may represent themselves in arbitration.

Second, the proposed rule change codifies current practice permitting the multi-jurisdictional practice of law by attorneys in the NASD Dispute Resolution forum to the extent permitted by state law. In addition, the proposed rule change states that if a party chooses to be represented by an attorney, the attorney must be licensed to practice in a U.S. jurisdiction and be in good standing in that jurisdiction. NASD stated that requiring an attorney to be licensed and in good standing in a U.S. jurisdiction will protect investors by prohibiting individuals who have been suspended from the practice of law or disbarred

from representing parties in the NASD forum. Further, NASD stated that the requirement for an attorney to be licensed to practice in a U.S. jurisdiction sets a standard of practice for its forum that is consistent with the other rules and proceedings of NASD.

Third, the proposed rule change addresses the representation of parties by non-attorneys in the NASD forum. Under the proposed rule change, parties may be represented in an arbitration or mediation by a person who is not an attorney, unless applicable law prohibits such representation or the person is currently suspended or barred from the securities industry in any capacity or is currently suspended from the practice of law or disbarred.

Last, the proposed rule change would allow an attorney to represent a client in an NASD arbitration or mediation held in any U.S. hearing location, regardless of the jurisdiction in which the attorney is licensed. An attorney's ability to represent clients in a jurisdiction in which he or she is not licensed, however, would be subject to the applicable law of that jurisdiction. The proposed rule change is not intended to preempt state law; it is intended to reflect current practice in the forum which, based on experience, indicates that the outcome of a dispute resolution proceeding depends more on the level of knowledge, training and skill of the attorneys, rather than the jurisdiction from which the attorneys received their license to practice.

The text of the amended rule is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

Customer Code

12208. Representation of Parties

(a) Representation by a Party

Parties may represent themselves in an arbitration held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

(b) Representation by an Attorney

At any stage of an arbitration proceeding held in a United States hearing location, [All] all parties shall have the right to be represented by [counsel during any stage of an arbitration] an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

(c) Representation by Others

Parties may be represented in an arbitration by a person who is not an attorney, unless:

- . state law prohibits such representation, or*
- . the person is currently suspended or barred from the securities industry in any capacity, or*
- . the person is currently suspended from the practice of law or disbarred.*

(d) Qualifications of Representative

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

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Industry Code

13208. Representation of Parties

(a) Representation by a Party

Parties may represent themselves in an arbitration held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

(b) Representation by an Attorney

At any stage of an arbitration proceeding held in a United States hearing location, [All] all parties shall have the right to be represented by [counsel during any stage of an arbitration] an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

(c) Representation by Others

Parties may be represented in an arbitration by a person who is not an attorney, unless:

. state law prohibits such representation, or

. the person is currently suspended or barred from the securities industry in any capacity, or

. the person is currently suspended from the practice of law or disbarred.

(d) Qualifications of Representative

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

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Code of Arbitration Procedure

10407. Representation of Parties

(a) Representation by Party

Parties may represent themselves in mediation held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

(b) Representation by an Attorney

At any stage of a mediation proceeding held in a United States hearing location, all parties shall have the right to be represented by an attorney at law in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.

(c) Representation by Others

Parties may be represented in mediation by a person who is not an

attorney, unless:

. state law prohibits such representation, or

. the person is currently suspended or barred from the securities industry in any capacity, or

. the person is currently suspended from the practice of law or disbarred.

(d) Qualifications of Representatives

Issues regarding the qualifications of a person to represent a party in mediation are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the mediation proceeding shall not be delayed pending resolution of such issues.

[10407] *10408. Mediator Selection*

(a)-(d) No change.

[10408] *10409. Limitation on Liability*

No change.

[10409] *10410. Mediation Ground Rules*

(a)-(g) No change.

[10410] *10411. Mediation Fees*

(a)-(c) No change.

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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 FINRA Dispute Resolution Process, please click on the FINRA Dispute Resolution website at www.finra.org. If you need additional help, please contact Scott Donnini at (215) 496-5358.