

## Extension of Injunctions Rule Sought

NASD Regulation, Inc., has requested that the SEC extend Injunctions Rule 10335 (formerly Section 47) through January 3, 1998. This Rule, which became effective January 3, 1996, for a one-year period, contains procedures that have allowed NASD member firms and their associated persons or employees to obtain interim or temporary injunctive relief from arbitrators, as well as from a court of law.

Since its adoption and through December 5, 1996, 237 cases have been filed with NASD Regulation seeking injunctive relief under this Rule. These controversies have ordinarily involved employees and their former and present NASD employers and issues

relating to the ownership and use of investor or customer records. NASD Regulation staff and parties report that these procedures have expedited the resolution of these intra-industry disputes. However, NASD Regulation is seeking a second one-year extension of this Rule in order to permit the staff to adequately evaluate all comments, complaints, and suggestions as to how the Injunctions Rule might be improved to better meet the needs of industry users. In 1997, the staff will recommend necessary modifications to this Rule for consideration by the NAMC and the NASD Regulation Board of Directors.

## Audio Tapes Now Available

Audio tapes from recent NASD Regulation educational and training programs are available for purchase. Hear the latest developments in dispute resolution from leading industry experts and senior NASD staff. Topic areas include:

- "What's Next for Dispute Resolution," remarks by Linda Fienberg, Executive Vice President, Dispute Resolution, and Chief Hearing Officer, NASD Regulation, Inc. (October 1996).
- Arbitrator Skills Training Program (May 1996).
- Northeast Arbitrator Skills Program (February 1996).
- Arbitrator Skills Training and Mediator Advocacy Skills programs (November 1995).

Please call NASD Corporate Communications at (202) 728-6900 to request a complete list of audio tape titles, accompanying fees, and an order form.



NASD REGULATION

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# NASD REGULATION

## The Neutral Corner

### ***NASD Regulation Board Approves Task Force Initiatives***

As reported in the April issue of *The Neutral Corner*, the NASD® Task Force on Arbitration Policy, headed by former Securities and Exchange Commission (SEC) Chairman David S. Ruder, released its report in January 1996 recommending numerous changes to improve the securities arbitration process. During the past year, NASD Regulation<sup>SM</sup> staff and the National Arbitration and Mediation Committee (NAMC) have been reviewing the Task Force recommendations and proposing to the NASD Regulation Board of Directors rules and other means to implement the recommendations. Generally, the staff and the NAMC are reviewing and crafting recommendations in three stages: customer-industry disputes, employee-member firm disputes, and member firm-member firm disputes.

### **July Board Actions**

In July of this year, the NASD Regulation Board approved increases in staff dedicated to the mediation program, the recruitment and training of arbitrators, and case administration. The Board also approved a procedure for the early appointment of full panels of arbitrators to resolve discovery and other preliminary motions and to schedule evidentiary hearings. NASD Regulation has taken immediate steps to implement these actions—none of which require SEC approval. (See the August 1996 edition of *The Neutral Corner* for a description of these Board actions.)

### ***December 1996 What's Inside***

Letters To The Editor .....	2
Practitioner Mediator Roster Launched .....	3
Selected Arbitration Statistics .....	7
Extension of Injunctions Rule Sought .....	8
Audio Tapes Now Available .....	8

*continued on page 4*

### ***NASD Regulation Revises Arbitrator Training***

*In January 1996, the NASD Arbitration Policy Task Force recommended that the NASD continually evaluate the effectiveness of its existing arbitrator training programs and make a greater effort to ensure some minimum standard of arbitrator preparedness.*

NASD Regulation recently completed a major revision of its arbitrator training program

and materials. The training, with programs and materials tailored for potential NASD Regulation panel members and chairpersons, provides an innovative approach to imparting knowledge about the arbitration process and procedures.

Members of the Training and Qualifications Subcommittee of the NAMC, the Technical

*continued on page 5*

## Letters To The Editor

### Dear Editor:

Congratulations on winning a 1996 APEX Award of Excellence. As a practitioner in securities arbitration, I have appreciated the pragmatic approach of *The Neutral Corner*. Too often in-house publications are filled with irrelevant, self-laudatory puff pieces. Not your new newsletter.

Your prior articles on executive session (December 1995) and your current one on the Chairperson's Role (August 1996) in handling key procedural issues show an insight to the process that few of us are privy to.

**David E. Robbins**  
New York, New York



### To The Editor:

NASD Regulation's Executive Vice President of Dispute Resolution, Linda Fienberg, also received a letter regarding *The Neutral Corner*. An excerpt follows:

Congratulations are also in order for the award to *The Neutral Corner*. Having chaired a number of cases, I found (the editor's) note on the Chairperson's role right on point. I suggest that (this) article be annexed to the hearing procedures outline as it is a useful set of guidelines.

**James Dolan**  
Garden City, New York

Editor's Note: This publication celebrates the first anniversary of The Neutral Corner. In the coming year, we will bring you vital information about our Dispute Resolution Program, as well as updates about any key NASD Regulation Board actions or other arbitration and/or mediation policy issues. In the meantime, we welcome and encourage your comments on the material presented in The Neutral Corner. NASD Regulation reserves the right to publish or not to publish the letters received. Your letters to the editor may be condensed and edited, where appropriate.

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## Practitioner Mediator Roster Launched

Users of our mediation services tell us that what they want most in our program is more skilled mediators who thoroughly understand securities law and trading practices. We are responding to that expressed need by developing a special roster of practitioner mediators. The aim of this initiative is to develop a highly qualified group of individuals with significant securities expertise who are acceptable to both investor and member firm representatives. By providing such individuals with an intensive mediator training program, we will increase the number of neutrals with the desired combination of subject-matter knowledge and process skills.

NASD Regulation formed a Council\* to design the Practitioner Mediator Roster and to establish guidelines for the nomination and qualification process. The Council set nomination standards to ensure substantial subject-matter expertise for this supplemental pool. The two requirements for applicants or nominees are:

1. *at least 10 years of legal practice in securities law or 10 years in the securities industry as a Series 24 registered principal or in a supervisory capacity, and*
2. *at least five years of experience in securities dispute resolution.*

Securities dispute resolution experience may come from the role of arbitrator, mediator, regulator, advocate, consultant, or expert witness.

The nomination/application process will remain open through the end of March 1997. The Council will screen the nominations based on each candidate's ability to demonstrate fairness, competence, integrity, and potential mediator skills. A significant element of the review will be the degree of respect candidates are found to command by counsel in their respective geographic regions.

Most candidates for this supplemental roster will not have experience as mediators and cannot meet the current requirement of producing four references from persons who have observed their mediation technique. Therefore, the Council decided that the successful

completion of the training element, plus observation of at least two securities mediations with experienced mediators, will substitute for the letters of reference needed to qualify for the regular mediator pool.

The selected nominees will be invited to attend, at their own expense, a mediator skills training session, sponsored by NASD Regulation. NASD Regulation will schedule training sessions in at least four locations during 1997. The Council will have the discretion to accept other high-quality programs to satisfy the training element.

For more details about this initiative, please contact Mediation Director Ken Andrichik at (212) 858-3915. To request this special application, please call (212) 858-3992, (212) 858-4351, or (212) 858-4310.

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*\* Council members have played integral roles with the NAMIC, the Arbitration Policy Task Force, SICA, the Public Investors Arbitration Bar Association, the Securities Industry Association, and other organizations. Collectively, they represent a true cross section of the forces that have shaped the resolution of securities disputes. The Council is comprised of industry and investor representatives, plus Roger M. Deitz, an experienced mediator who currently chairs the NASD Regulation Mediation Subcommittee.*

### **Council Members**

Roger M. Deitz, Attorney at Law,  
New York, NY

Paul Dubow, Dean Witter, San Francisco, CA

William Fitzpatrick, Securities Industry  
Association, New York, NY

William Lapp, Lapp, Laurie, Libra, Arbramson  
& Thomson, Minneapolis, MN

Joan Lavell, Coastal Securities Ltd.,  
Sugar Land, TX

Seth Lipner, Deutch & Lipner, New York, NY

J. Boyd Page, Page & Bacek, Atlanta, GA

## Board Approves Task Force Initiatives *From page 1*

### September Board Actions

In September 1996, the Board endorsed additional Task Force recommendations to improve the arbitration process in disputes between customers and member firms. First, the Board approved the list selection method for the appointment of arbitrators. This method will allow the parties a much greater role in the selection of the arbitrators who will resolve their disputes. Under this procedure, the staff will provide the parties with a single

round of lists of public and non-public arbitrators from which the parties will select the arbitrators. The list of public arbitrators will contain approximately twice as many names as the list of industry arbitrators, since generally two public members and one industry member sit on each panel. The arbitrators will be

selected for the lists on a rotating basis after screening for geographic proximity to the hearing location and conflicts of interest. In addition, some arbitrators may be screened for subject-matter knowledge upon request of a party. The parties may strike any arbitrator listed and rank those remaining in order of preference. If the parties do not select a full panel through this process, then the staff will appoint arbitrators to any opening on the panel. The staff appointments are subject only to challenges for cause; in the event of a cause challenge, the staff will determine whether good cause for removal of the arbitrator exists.

The parties may agree to select one of the arbitrators to be the Chairperson of the panel. If the parties cannot agree, the staff will appoint one of the public arbitrators to be the Chairperson.

Second, the Board adopted a rule to implement the Task Force recommendation to expand the cases that can be decided by a single arbitrator by modifying the dollar amounts for simplified and standard arbitra-

tions. The Board approved amendments to NASD Rules 10302—simplified arbitration involving public customers (formerly Section 13)—and 10203—simplified industry arbitration involving member firms and their associated persons only (formerly Section 10). These Rule changes will raise the ceiling of public and intra-industry claims that may be decided by a sole arbitrator *exclusively on the papers filed* from \$10,000 to \$25,000. In addition to raising the ceiling

for simplified or paper-case arbitrations, the Board approved amendments to NASD Rules 10202 (formerly Section 9) and 10308 (formerly Section 19). These changes raise the ceiling for standard cases that may be *heard* by a sole arbitrator from \$30,000 to \$50,000.

Third, the Board approved a modified procedure for

administering party requests or motions to dismiss claims on grounds of *ineligibility* pursuant to NASD Rule 10304 (formerly Section 15). As of August 1, 1996, the staff has neither reviewed filed claims for purposes of eligibility on a pre-service or post-service basis, nor issued preliminary eligibility determinations. Instead all eligibility motions have been referred to arbitrators for their decision. This change in the exercise of staff discretion applies to pending, as well as newly filed, claims and is intended to be an interim measure pending final resolution of the eligibility issue.

The Board cannot implement these actions until they are approved by the SEC. NASD Regulation will file rule proposals with the SEC on list selection and an increase in the dollar ceiling for single arbitrators in early 1997. NASD Regulation has already submitted a rule filing, which is currently pending, to the SEC concerning the interim eligibility procedure.

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**The list selection method will allow the parties a much greater role in the selection of the arbitrators who will resolve their disputes.**

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## November Board Actions

At its meeting in November 1996, the Board approved two rule changes that are substantially similar to changes recommended by the Task Force. The Board approved an amendment to the eligibility rule—NASD Rule 10304 (formerly Section 15)—that will eliminate the six-year eligibility rule, but on a prospective basis only. Because of its prospective nature, the rule permits the filing *only* of those claims that would be eligible as of the effective date of the rule change. The proposed rule also provides that statute of limitation defenses will continue to be available to parties and that presiding arbitrators will have to determine the applicability of federal or state statutes of limitations. For transactions over six years old on the date of the rule's effectiveness, the new rule adopts the Securities Industry Conference on Arbitration (SICA) proposal to determine the eligibility of the claim for arbitration. (See the *Securities Arbitration Commentator*, Vol. VIII, No. 5, published September 10, 1996, for a discussion of the SICA proposal.)

The Board also recently approved a rule allowing punitive damage awards in public-customer arbitrations if the party seeking such damages is, at the time the claim is filed in arbitration, a citizen of a state where a court could award punitive damages for the same type of claim. Arbitrators will also look to that

state's law for the standard of conduct to be used in determining whether the evidence presented warrants an award of punitive damages. The new rule limits the amount of punitive damages that can be awarded to up to two times compensatory damages or \$750,000, whichever is less. The Board, like the Task Force, views this rule as the best compromise available to satisfy two compelling arguments: the investor's right to the same remedy in arbitration as is available in court and the industry's concern with runaway awards.

The eligibility and punitive damage rules will be considered by the NASD parent Board in January 1997. If approved by the parent Board, they will be filed with the SEC for notice, comment, and approval.

## Future Board Actions

In 1997, the NASD Regulation Board will continue to act on other Task Force recommendations aimed at improving the arbitration system. Among these recommendations are proposals to improve the discovery process and to clarify the contents of predispute arbitration agreements signed by public customers.

## **NASD Regulation Revises Arbitrator Training** *From page 1*

Review Team staff of the NASD Regulation Office of Dispute Resolution, and other NASD staff contributed thousands of hours to this effort. Gary L. Tidwell, a member of the NAMC and a key participant in this endeavor, describes the training program as "designed to provide arbitrators with the basic procedural skills necessary to conduct a fair and efficient arbitration." Tidwell, Professor of Legal Studies at the College of Charleston, South Carolina, and an experienced NASD Regulation arbitrator, adds that "the program was drafted with the realization that this training for arbitrators will affect all parties to the arbitration process."

The training conveys "what the arbitration process is, what issues may arise in the process, and the ramifications of those issues. We provide ways to resolve procedural issues by outlining generally accepted ways of doing things, and at the same time not stifling the independent decision-making of arbitrators," says Tidwell.

NASD Regulation's arbitrator training program includes two major components: (1) a distance learning, self-study training and (2) an onsite, classroom-style training session. Approximately three weeks prior to the onsite training, NASD Regulation will send pre-

*continued on page 6*

## NASD Regulation Revises Arbitrator Training *From page 5*

course materials to attendees. This portion of the training will allow for “self-study at your own pace. The first steps and a majority of the training will occur using a self-paced, distance format,” says Tidwell. The pre-course materials include a *Panel Member or Chairperson Course Preparation Guide* (depending on the program the trainee has enrolled in) and other reference materials such as the *Code of Arbitration Procedure*.

Attendees will be expected to read and complete the self-study material before attending the class in order to fully profit from the onsite training. In fact, upon arrival at the training session, attendees will be required to sign a statement acknowledging the fact that they have read and studied the pre-course materials. The acknowledgment must be signed before a participant will receive credit for the training program and before he/she will be allowed to serve as an NASD Regulation arbitrator.

During the three-hour onsite training session, attendees will have the opportunity to examine the issues and topics addressed in the pre-course materials in much more depth and detail. The onsite training will be conducted by NASD Regulation Office of Dispute Resolution attorneys as well as veteran arbitrators. Discussions at the classroom session will be supplemented with other arbitration reference materials and videotaped scenarios of various arbitration hearing situations.

“The arbitrator training materials underwent an extensive review and editing process, with the utmost care given to maintaining accurate, neutral, and unbiased information,” says Tidwell. “Also, arbitrators can use these materials as reference guides after the training.”

In order to measure the effectiveness of the newly revised NASD Regulation arbitrator training program and its accompanying materials, NASD Regulation has developed various assessment tools. More specifically, the three assessment tools will help NASD Regulation objectively critique its training program, format, and ability to communicate the training information to attendees.

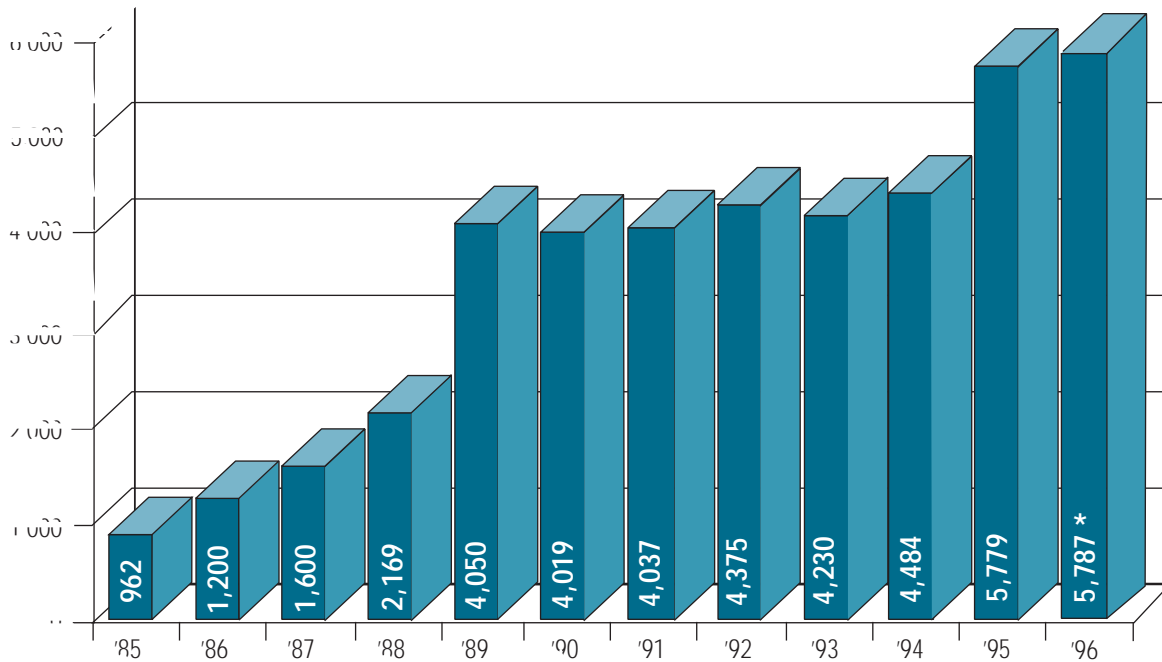
The first assessment will require attendees to individually respond to 12 multiple-choice questions designed to assess the effectiveness of the pre-course study materials. The second assessment will require attendees to respond to three questions designed to evaluate the effectiveness of the onsite training program and curriculum. The third assessment will ask attendees to critique this new and revised training program.

Tidwell, who was instrumental in developing these assessments and will be active in measuring the data, will use these tools to help determine if “there has been a successful transfer of knowledge from the written materials and interactive training to the training participants. These assessments will provide objective, statistical data to allow NASD Regulation to effectively evaluate the training program. It will be a critique of us—of our process and of our training skills and methodology,” says Tidwell.

Each of the NASD Regulation regional Dispute Resolution offices are currently scheduling Panel Member and Chairperson arbitrator training programs throughout the country. For more information on arbitrator training or how to enroll for specific training sessions, please contact one of the Dispute Resolution offices listed in this newsletter’s directory appearing on page 2.

In addition to serving on the NAMC and teaching at the College of Charleston, Gary Tidwell was an attorney in the SEC’s Enforcement Division and formerly an Assistant Professor of Law at the United States Military Academy at West Point. He has won numerous teaching and research awards and grants, including being twice named the College of Charleston nominee for “Governor’s Professor of the Year.” Most recently, he received the “Innovative Teaching Award” from the Southern Business Administration Association for developing a business ethics course consisting of taking students to nine different federal prison camps and interviewing “white-collar” inmates.

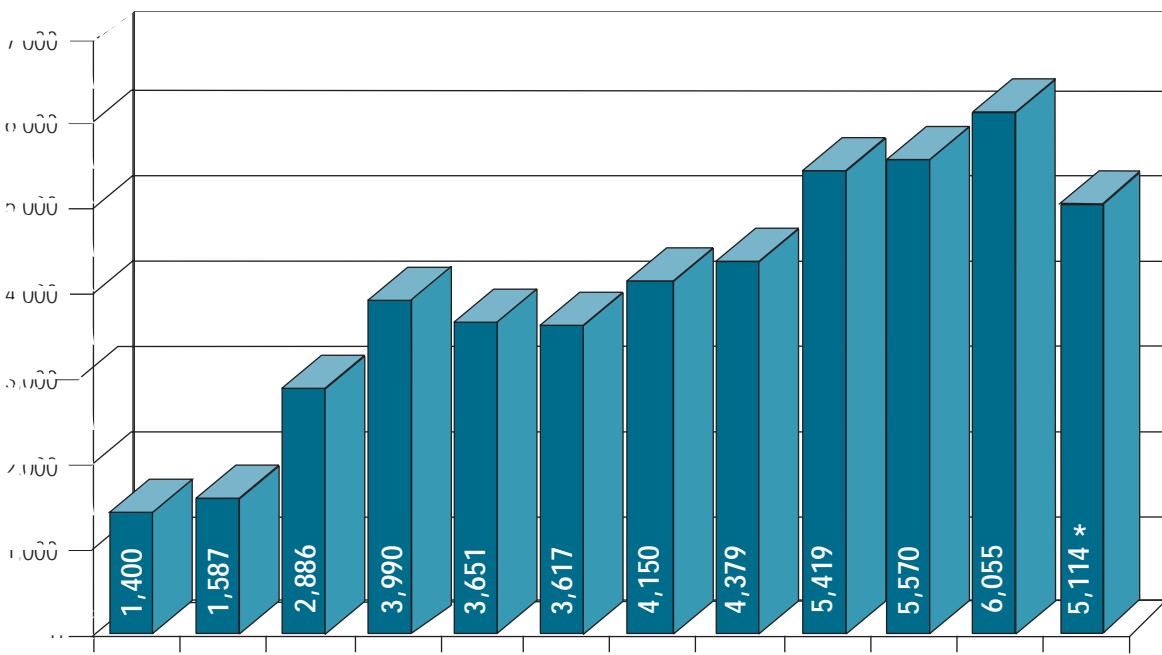
### Number Of NASD Regulation Arbitration Cases Closed Annually



**\*This represents a projected cumulative increase of 12 percent over last year.**

Through November

### Arbitration Cases Filed With NASD Regulation Annually



**\*This represents a projected cumulative decrease of 8 percent over last year.**

Through November