

in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and clarify the rule regarding use of choice of law provisions in predispute arbitration agreements. In Amendment No. 4, NASD proposes to change the effective date of the proposed rule change to be 90 days following publication of a Notice to Members announcing approval by the Commission of the proposed rule change; NASD will issue such Notice to Members within 60 days of Commission approval. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rules of the Association

3000. Responsibilities Relating to Associated Persons, Employers, and Others' Employees

3110. Books and Records

(f) Requirements When Using Predispute Arbitration Agreements [With] for Customer Accounts

(1) Any predispute arbitration agreement clause shall be highlighted and shall be immediately preceded by the following [disclosure] language [(printed) in outline form [as set forth herein] which shall also be highlighted].

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) [Arbitration is final and binding on the parties.] *All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.*

(B) [The parties are waiving their right to seek remedies in court, including the right to a jury trial.] *Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.*

(C) [Pre-arbitration discovery is generally more limited than and different from court proceedings.] *The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.*

(D) [The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings of

the arbitrators is strictly limited.] *The arbitrators do not have to explain the reason(s) for their award.*

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(F) *The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.*

(G) *The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.*

(2)(A) [Immediately preceding the signature line,] *In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement [which shall be highlighted] that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.*

(B) *At the time of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.*

(3) [A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.]

(A) *A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request.*

(B) *Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.*

(4) [No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.]

(A) *No predispute arbitration agreement shall include any condition that:*

(i) *limits or contradicts the rules of any self-regulatory organization;*

(ii) *limits the ability of a party to file any claim in arbitration;*

(iii) *limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;*

(iv) *limits the ability of arbitrators to make any award.*

(B) *No member may seek to enforce any choice-of-law provision unless there is a significant contact or relationship between (i) the law selected and (ii) either the transaction at issue or one or more of the parties.*

(5) [The requirements of subparagraphs (1) through (4) shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.] *If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.*

(6) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) The class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(7) [The requirements of subparagraph (6) shall apply only to new agreements signed by an existing or new customer of a member after October 28, 1993.] *The provisions of this Rule shall become effective on (effective date). The provisions of subparagraph (3) shall apply to all members as of the effective date of this Rule regardless of when the customer agreement in question was executed. Otherwise, agreements signed by a customer before (effective date) are subject to the provisions of this Rule in effect at the time the agreement was signed.*

(g)—(h) Unchanged.

* * * * *