

# The Neutral Corner

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## ***NASD Dispute Resolution, Inc.***

As mentioned in the July 2000 issue of *The Neutral Corner*, NASD Dispute Resolution, Inc., a new subsidiary company under the umbrella of the National Association of Securities Dealers, Inc. (NASD®), became operational as a separate company on July 9, 2000. It is subject to the same Securities and Exchange Commission (SEC) oversight as the NASD, NASD Regulation<sup>SM</sup>, The American Stock Exchange®, and The Nasdaq Stock Market®.

Formerly known as the NASD Regulation Office of Dispute Resolution, this newly formed entity will continue to administer the NASD's arbitration, mediation, and other alternative dispute resolution services.

Under the leadership of President Linda D. Fienberg, the creation of this new subsidiary recognizes the importance of the NASD's dispute resolution program and further strengthens the independence, impartiality, and credibility of the arbitration and mediation functions.

NASD Dispute Resolution includes six administrative offices where staff train and qualify arbitrators and mediators, maintain rules and procedures, and administer the dispute resolution process in 46 locations nationwide.

In addition to its staff, NASD Dispute Resolution has its own

six-person Board of Directors (see box on page 3 for list of Board members), chaired by John Sexton, Dean of the New York University Law School. "It is wonderful that John is willing to volunteer his time to help better the role of dispute resolution in the securities industry," said NASD Dispute Resolution President Linda D. Fienberg.

Among its activities, the NASD Dispute Resolution Board has the authority to appoint a National Arbitration and Mediation Committee, which makes recommendations to the Board regarding the conduct of arbitrations, mediations, and other dispute resolution matters. The Board recently held its first meeting and will hold another in December.

### **Goals**

NASD Dispute Resolution's major goals include:

- Continue to streamline and simplify processes to provide more effective and efficient dispute resolution services.
- Improve the discovery and hearing processes.
- Upgrade and facilitate access for parties, staff, and neutrals (arbitrators and mediators) using Web-based technologies.

*continued on page 3*



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## ***Message From The Editor***

### **Neutral Corner Survey**

Enclosed in this newsletter mailing please find a survey for readers of *The Neutral Corner*. NASD Dispute Resolution would like to obtain your feedback about *The Neutral Corner*. Please take a few minutes to complete the survey, and return it using the self-addressed, postage-paid envelope enclosed for your convenience. You may also fax your completed survey to Luis Cruz at (212) 858-4389. Your responses will be kept confidential.

Thank you for your assistance in helping us to improve communication with you.

### **Wanted: Alternate Means Of Communicating With You**

To facilitate communication with you, especially when you are selected for cases, please provide NASD Dispute Resolution with different ways we can contact you.

Providing alternate phone numbers, phone numbers with voicemail or answering machine, pager numbers, facsimile numbers, or electronic mail addresses will allow us to serve you, as well as the parties, more efficiently.

Please provide your local NASD Dispute Resolution Office with alternate means of contacting you.

### **Sign-Up For E-Mail Broadcast**

NASD Dispute Resolution – through its Web Site at [www.nasdadr.com](http://www.nasdadr.com) – has provided a way for interested visitors to obtain regular updates about new Web Site information.

To receive e-mail notification of additions and changes to the Dispute Resolution Web Site, visitors will need to complete a brief online form. This is a free service, and you will be able to unsubscribe at any time.

Go to the Home Page of [www.nasdadr.com](http://www.nasdadr.com) and click on the link titled “E-Mail Subscription”.

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Editor's Note: In future issues of *The Neutral Corner*, your letters to the editor will be featured here. We welcome and encourage your comments on the material presented in this publication. NASD Dispute Resolution reserves the right to publish or not publish the letters received.

NASD Dispute Resolution, Inc., from page 1

### NASD Dispute Resolution, Inc. Board of Directors

#### John Sexton

Chairman  
Dean  
New York University Law School

#### Donald J. Kirk

Vice-Chairman  
Public Oversight Board  
American Institute of Certified Public Accountants

#### Linda D. Fienberg

President  
NASD Dispute Resolution, Inc.

#### John D. Markese

President  
American Association of Individual Investors

#### Donald B. Marron

Chairman and Chief Executive Officer  
PaineWebber Group

#### Richard C. Romano

President  
Romano, Brothers & Company

- Reduce caseload per staff to provide timely and better customer service.
- Continue a strong Mediation Program and facilitate settlement of disputes without using arbitration.

### Initiatives

NASD Dispute Resolution is also pursuing a number of significant initiatives. Among those is continued work on the **Neutral List Selection System (NLSS)**—a computer-generated arbitrator selection system. Recently, NASD Dispute Resolution held focus groups in which parties' counsel indicated the success of NLSS in "providing parties more control over the selection of the arbitrators who will hear their case," stated Linda Fienberg.

Another initiative is the **Discovery Guide**, which became available in November of last year. The Discovery Guide consists of introductory and instructional text, and 14 Document Production Lists, providing guidance to parties on which documents they should exchange without arbitrator or staff intervention, and to arbitrators in determining which documents customers and member firms or

associated persons are presumptively required to produce in customer arbitrations. NASD Dispute Resolution has begun holding focus groups, four in total, to review Discovery Guide effectiveness. So far, feedback has been positive, particularly by frequent participants in the forum.

NASD Dispute Resolution also continues its work on **MATRICS** (Mediation and Arbitration Tracking and Retrieval Interactive Case System)—an ambitious project to completely redesign its computer system. The new system, to be rolled out in phases over the next few years, will feature a Web-based gateway for parties, counsel, arbitrators, mediators, and staff. The new system will provide for online filing of claims, pleadings, and correspondence, as well as online scheduling of hearings and selection of arbitrators and mediators.

In the area of **neutral training**, the current focus is on recruiting efforts to increase the total number of women and minority arbitrators. "We have been targeting locations where there is a need for more arbitrators by working with legal and financial services organizations/associations that include women and minorities to achieve more diversity," stated Linda Fienberg.

In the **rules** area, NASD Dispute Resolution has several initiatives as well. NASD Dispute Resolution is working on enhancements to NLSS before the launch of MATRICS. It also currently has out for comment a proposed rule change to amend NASD Rules 10308 and 10312 to provide authority for the Director of Arbitration or the President of NASD Dispute Resolution to remove arbitrators for cause after hearings have begun. And, NASD Dispute Resolution will soon provide the SEC with a response to comments relating to a rule simplifying and expediting the procedures

for seeking injunctive relief in intra-industry disputes. The proposed rule will replace the pilot rule that has been in effect since 1996.

As NASD Dispute Resolution moves forward under its new status as a separate subsidiary of the NASD, we will continue to provide our constituents with updates on major activities through this newsletter and other communication outlets. Please visit the new NASD Dispute Resolution Web Site, at [www.nasdadr.com](http://www.nasdadr.com), for the most up-to-date information.

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## ***Discovery Guide Update***

In response to questions relating to the *Discovery Guide* for public customer arbitrations, NASD Dispute Resolution staff developed a list of *Frequently Asked Questions & Answers*. The last update to these Questions and Answers involved the issue of Discovery Guide applicability to simplified public customer arbitrations or cases where a selected arbitrator renders an award based *exclusively* on the filed pleadings/documents. This subject is discussed in the *Frequently Asked Questions & Answers* document below (question and answer #9):

### **9. Does the Discovery Guide apply to simplified arbitration (small claims) proceedings?**

**Answer:** The Discovery Guide is not intended for use in simplified arbitration proceedings under Rule 10302. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Discovery Guide in a manner consistent with the expedited nature of simplified proceedings.

You can review these Questions and Answers by visiting our Web Site at [www.nasdadr.com](http://www.nasdadr.com), clicking on Rules & Procedures, and viewing *Discovery Guide Frequently Asked Questions*. Following is the URL to get directly to this information on the Site: <http://www.nasdadr.com/disguide.asp>.

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## ***New Mediation Rules***

Effective November 1, 2000, the SEC approved new NASD Rule 10407 and conforming amendments to NASD Rules 10205 and 10332. NASD Rule 10407 establishes new mediation filing fees.

Also effective November 1, 2000, the SEC approved amendments to NASD Rule 10403. One amendment permits parties who agree to mediate to stay their pending arbitration case without seeking an adjournment from the arbitration panel. The other amendment provides that the adjourning parties will not have to pay arbitration adjournment fees if they agree to use NASD Dispute Resolution to administer their mediation.

### **New Fee Schedule**

The new mediation fee schedule on page 6 is designed to help fund the operational costs of the NASD Mediation Program while preserving mediation as a cost-effective alternative to arbitration for parties with claims of any dollar value. While the new schedule increases fees for some higher-dollar-value cases, fees for lower-dollar-value cases are reduced or remain the same.

The new fees apply to *any* case in which the parties agree to mediate on or after November 1, 2000—whether by filing a mediation directly or converting a pending arbitration. Mediation fees are charged only after all of the parties agree to submit a case to mediation.

### **Cases Filed Directly In Mediation**

For cases filed directly in mediation, new NASD Rule 10407(a) replaces the flat fees currently charged (\$150 per party for customer cases and \$250 per party for intra-industry cases) with a sliding-scale fee schedule based on the

size of the claim. Customers and associated persons will now pay filing fees ranging from \$50-\$300, and member firms will now pay filing fees of \$150-\$500. Mediation filing fees for all claims will be less than corresponding arbitration filing fees.

The new fee schedule reduces fees for claims of \$25,000 or less. For these cases, customers and associated persons will pay a filing fee of only \$50, and member firm filing fees will remain unchanged. This modification, combined with the \$50 per-hour small-claim rate offered by participating NASD mediators since April 2000, makes mediation even more cost-effective for low dollar-value claims.

“We are pleased that, as part of our new fee structure, we are able to offer lower fees to customers with small claims,” said Linda D. Fienberg, President of NASD Dispute Resolution. “This change reinforces our commitment to making mediation affordable for claims of any size.”

### **Mediation Cases Initially Filed In Arbitration**

For cases over \$25,000, NASD Dispute Resolution will charge mediation filing fees to parties agreeing to mediate after the arbitration has been filed. See NASD Rule 10407 (b). To provide incentive for parties to mediate small claims of \$25,000 or less, NASD Dispute Resolution will *not* charge any filing fees. To encourage mediation among parties who have pending arbitrations involving larger claims, mediation filing fees will be lower (\$100-\$250 for customers and associated persons; \$150-\$500 for members) than they are for cases filed directly in mediation.

## Mediation Filing Fees—Effective November 1, 2000

### Rule 10407. Mediation Fees

#### (a) Filing Fees: Cases Filed Directly in Mediation

Each party to a matter submitted directly to a mediation administered by the Association shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

Amount in Controversy	Customer and Associated Person Fee	Member Fee	Total Fees
\$.01-\$25,000	\$ 50	\$150	\$200
\$25,000.01-\$100,000	\$150	\$300	\$450
Over \$100,000	\$300	\$500	\$800

#### (b) Filing Fees: Cases Initially Filed in Arbitration

When a matter is initially filed in arbitration and subsequently submitted to a mediation administered by the Association, each party shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

Amount in Controversy	Customer and Associated Person Fee	Member Fee	Total Fees
\$.01-\$25,000	\$ 0	\$ 0	\$ 0
\$25,000.01-\$100,000	\$100	\$150	\$250
Over \$100,000	\$250	\$500	\$750

### New Adjournment Rules

The *new* adjournment rules, effective November 1, 2000, are contained in NASD Rule 10403 on page 7. NASD Rule 10403(a) authorizes parties to agree to adjourn a pending arbitration to mediate the controversy—without having to seek and obtain permission from an arbitration panel under NASD Rule 10319.

NASD Rule 10403(b) provides that no adjournment fees will be charged where there is an arbitration adjournment to mediate and the parties use NASD Dispute Resolution mediation.

“This change increases parties’ control of their dispute resolution process,” said Kenneth L. Andrichik, Director of Mediation. “Parties can agree not to pursue both arbitration and mediation simultaneously. We know that most cases settle in mediation, and parties might save costs by agreeing to put their arbitration on hold until their mediation is concluded. Parties mediating through NASD Dispute Resolution stand to save additional costs, as arbitration hearing adjournment fees will automatically be waived.”

To adjourn an arbitration under the new rule, all parties must submit a joint written request to assigned arbitration staff. The request must state that they agree to adjourn the arbitration to mediate.

If arbitration hearing dates *have been* scheduled, parties also need to submit several mutually agreed-upon dates on which to reschedule their arbitration hearing(s). Finally, the joint request must include the proper adjournment fee or state that the mediation will be conducted through NASD Dispute Resolution. If these requirements are met, the arbitration hearing(s) will be

adjourned and the arbitrators will be notified that the case is stayed for mediation.

If *no* arbitration hearings have been scheduled, parties may nevertheless agree to adjourn to mediate. If they do, assigned staff will stop processing the arbitration until they are asked by the parties to resume processing, or they are informed that the case settled. In this instance, the parties must submit a joint written request to assigned staff that their case be made “inactive”. This request will be granted and, if arbitrators have been appointed, they will be notified that the case is stayed for mediation.

### **Arbitration Adjournments to Mediate—Effective November 1, 2000**

#### **Rule 10403. Arbitration Proceedings**

- (a) Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code. When all parties agree to stay the arbitration in order to mediate the claim, the arbitration proceeding shall be stayed, notwithstanding any provision to the contrary in this Code.
- (b) If mediation is conducted through NASD Dispute Resolution, no adjournment fees will be charged for staying the arbitration proceeding in order to mediate.

Questions regarding the new mediation rules may be directed to Kenneth L. Andrichik, Director of Mediation, (212) 858-3915, e-mail: [ken.andrichik@nasd.com](mailto:ken.andrichik@nasd.com), or to Elizabeth McCoy, Assistant Director of Mediation, NASD Dispute Resolution, Inc., (212) 858-4341, e-mail: [elizabeth.mccoy@nasd.com](mailto:elizabeth.mccoy@nasd.com).

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## ***Facilitating Arbitrator Disclosure—Promoting Fair Arbitrator Selection***

### **Arbitrator Selection**

In November 1998, NASD Dispute Resolution implemented NLSS, permitting parties to select arbitrators from lists generated by an automated system. Since NLSS empowers parties to select panels, this forum continues to focus on improving the quality and quantity of arbitrator information made available to parties when they are choosing neutrals for their cases.

NASD Dispute Resolution's goal is to provide accurate, complete *Arbitrator Disclosure Reports* to the parties and to do so early in the process, so that parties can make more informed arbitrator choices under NLSS. To help NASD Dispute Resolution achieve this objective, arbitrators responded *en masse* to our nationwide effort to update their biographical information on file. See "Mass Mailing To Arbitrators" in the January 1999 edition of *The Neutral Corner*.

### **New Arbitrator Oath**

To continue in this endeavor, NASD Dispute Resolution and its policy/advisory group, the National Arbitration and Mediation Committee (NAMC), determined in January of this year to expand the contents of the Oath of Arbitrator to incorporate by reference three documents: the *Temporary & Permanent Arbitrator Disqualification Criteria*, the *Arbitrator Disclosure Checklist*, and your *Arbitrator Disclosure Report*.

The NAMC and NASD Dispute Resolution believe that careful consideration of the revised Arbitrator Oath will help arbitrators to better fulfill their disclosure and ethical obligations to the parties under NASD Rule 10312. In other words, the new Oath should help to facilitate arbitrator disclosure and result in more informed, efficient party selection of arbitrators. For more on your "Duty To Disclose" see the July 2000, November 1999, April 1997, and the December 1995 editions of *The Neutral Corner*.

In view of the above and since, under NASD Rule 10327, arbitrators must take their Arbitrator's Oath every time they serve on a new case, please take the time to read and understand the new Oath, a copy of which is enclosed with this edition of *The Neutral Corner*.

### **Arbitrator Updates**

We hope that the new Oath will help to further sensitize you—our arbitrators—not only to your disclosure obligation as neutrals, but also to the importance of *regularly* updating your arbitrator information records. **Don't wait to update!!** Contact your local NASD Dispute Resolution Office and communicate updates and new circumstances now.

You can electronically update your arbitrator information and narrative background by visiting our Dispute Resolution Web Site at [www.nasdadr.com](http://www.nasdadr.com) to complete the new *Dispute Resolution Arbitrator Information Update Form*.

## IRS Form 1099-MISC

The Internal Revenue Service requires that Form 1099-MISC be filed by payers for each individual and non-corporate payee to whom at least \$600 was paid for services rendered during a calendar year. The NASD and its affiliates do not issue 1099s to payees falling below the \$600 reporting threshold. The "payee" is the name appearing on the first line of the check.

The NASD is required by law to postmark Federal 1099s to recipients no later than January 31. This information is not filed with the Internal Revenue Service until the last business day of February. Therefore, changes/corrections to 1099s may be made prior to transmission to the IRS.

Questions concerning 1099 reporting should be directed to the following individuals of the NASD Finance Office Tax Department:

The mailing address for these individuals is:  
**National Association of Securities Dealers, Inc.**  
**Finance Office**  
 Decoverly Hall  
 9509 Key West Avenue  
 Rockville, MD 20850

**Grace E. Daniell** Associate Director

Phone: (240) 386-5328

Fax: (240) 386-5290

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**Paul D. Geary** Tax Accountant

Phone: (240) 386-5330

Fax: (240) 386-5290

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**Rosemary DeWitt** Jr. Tax Accountant

Phone: (240) 386-5329

Fax: (240) 386-5290

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**Pat Mistry** Tax Assistant

Phone: (240) 386-5331

Fax: (240) 386-5290

**Reminder:**

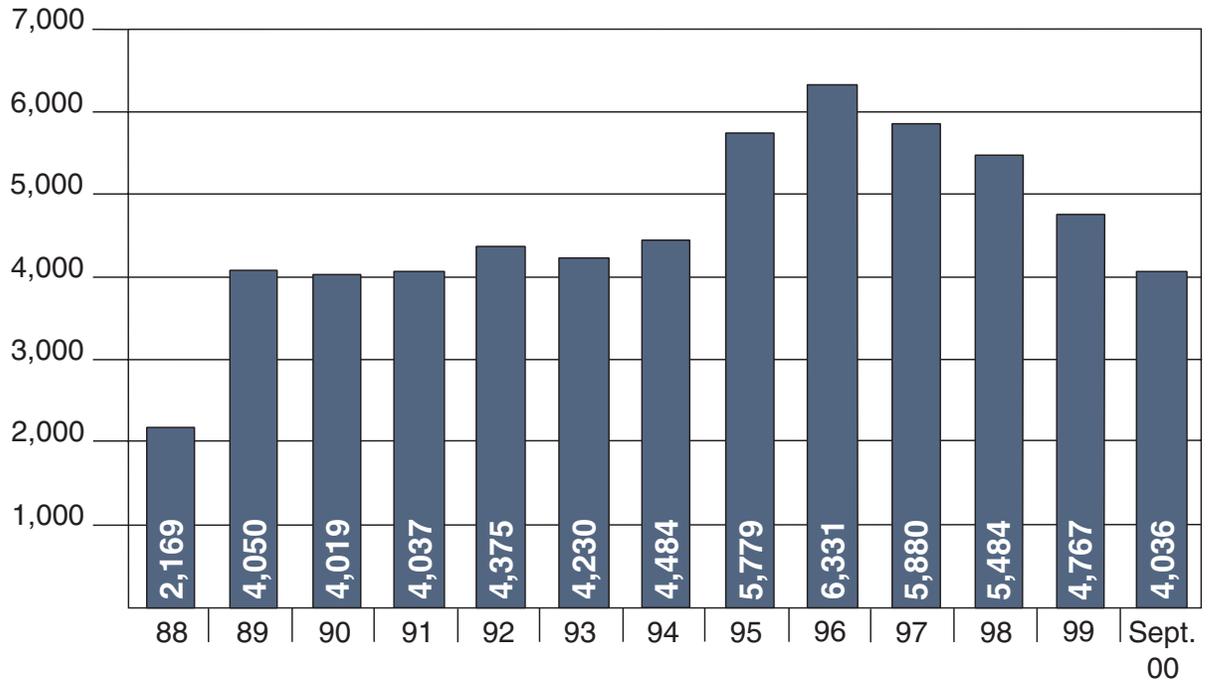
To request "payee" changes on **future** disbursements, arbitrators must communicate with their local NASD Dispute Resolution Office. These changes **cannot** be made by NASD Finance Accounts Payable or the Finance Tax Staff.

### Sharing Arbitrator Disclosure Reports

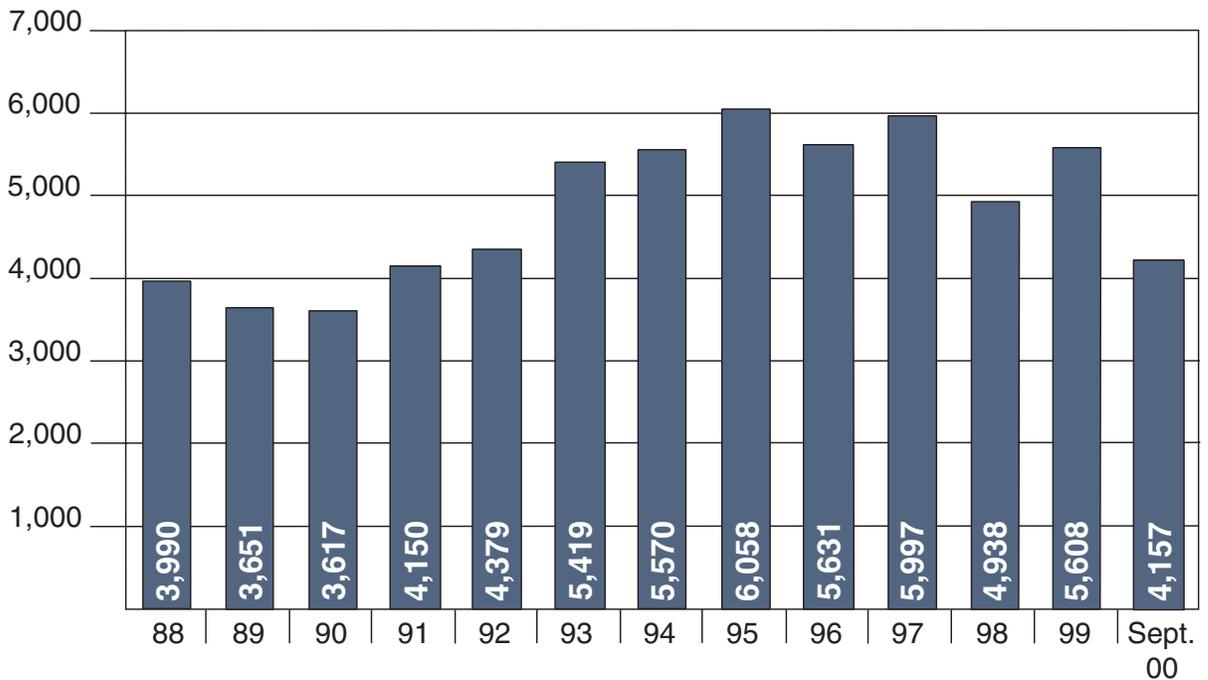
NASD Dispute Resolution always gives serious consideration to arbitrator suggestions. Recently, many of you told us that arbitrators would appreciate knowing the background or experience of their fellow panelists prior to the first hearing session. You expressed the common view that this information, provided early on, will help to promote better understanding among those who are selected to serve on a panel.

NASD Dispute Resolution agrees that implementing this idea will help to facilitate panel teamwork. Therefore, effective November 1, 2000, we will begin sharing *Arbitrator Disclosure Reports* among the members of three-person panels.

### ***NASD Arbitration Cases Closed Annually***



### ***NASD Arbitration Cases Filed Annually***



**Directory**

**Linda D. Fienberg**  
President  
NASD Dispute  
Resolution, Inc.

**George Friedman**  
Senior Vice President  
NASD Dispute  
Resolution, Inc.

**Jean Feeney**  
Special Advisor

**Dorothy Popp**  
Associate Vice  
President, Operations

**Kenneth L. Andrichik**  
Associate Vice  
President, Mediation  
and Dispute Resolution  
Business Strategies

**Barbara L. Brady**  
Director, Neutral  
Management

**Tom Wynn**  
Assistant Director  
Editor, The Neutral  
Corner

**William N. Bonilla**  
Assistant Director  
Technology and  
Financial Planning

**John C. Barlow**  
Regional Director  
Midwest Region

**Elizabeth R. Clancy**  
Regional Director  
Northeast Region

**Judith Hale Norris**  
Regional Director  
Western Region

**Rose Schindler**  
Regional Director  
Southeast Region

**Dispute Resolution Offices**

**Northeast Region**  
NASD Dispute  
Resolution, Inc.  
125 Broad Street  
36th Floor  
New York, NY 10004-2193  
(212) 858-4400  
Fax: (212) 858-3974

NASD Dispute  
Resolution, Inc.  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8958  
Fax: (202) 728-6952

**Western Region**  
NASD Dispute  
Resolution, Inc.  
525 Market Street  
Suite 300  
San Francisco, CA 94105  
(415) 882-1234  
Fax: (415) 546-6990

NASD Dispute  
Resolution, Inc.  
300 S. Grand Avenue  
Suite 1620  
Los Angeles, CA 90071  
(213) 613-2680  
Fax: (213) 613-2677

**Southeast Region**  
NASD Dispute  
Resolution, Inc.  
Boca Center Tower 1  
5200 Town Center Circle  
Suite 400  
Boca Raton, FL 33486  
(561) 416-0277  
Fax: (561) 416-2267

**Midwest Region**  
NASD Dispute  
Resolution, Inc.  
10 S. LaSalle Street  
Suite 1110  
Chicago, IL 60603-1002  
(312) 899-4440  
Fax: (312) 236-9239



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# Join us for the 2000 Fall Securities Conference.

At this event, you will learn about and discuss the latest developments in the securities industry. Also you will hear from industry experts and NASD Regulation leadership, explore regulatory issues, and much more.

Watch your mail for a conference brochure and registration materials. Also, visit the NASD Regulation Web Site.

[www.nasdr.com](http://www.nasdr.com)



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***San Francisco, CA***

**2000 NASD Regulation  
Fall Securities  
Conference**

November 15-17, 2000  
*Sheraton Palace Hotel*

