INTERNATIONAL SECURITIES EXCHANGE

Regulatory Information Circular			
Circular number:	2004-04	**Contact:**	Michael J. Simon
Date:	May 24, 2004	**Telephone:**	212-897-0230

Subject: Rule Change Notice – Changes to NASD Arbitration Rules

Pursuant to ISE Rule 1800, which in part states that the NASD's Code of Arbitration shall govern ISE arbitrations, this Regulatory Information Circular informs Members of proposed and approved rule changes to the NASD Code of Arbitration published by the Securities and Exchange Commission, attached.

• In the May 21, 2004 *Federal Register*, the Commission approved a rule change (SR-NASD-2003-164) amending NASD IM-10104, Rule 10306 and 10319. The rule imposes a fee of $100 per arbitrator on parties to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session.
(Securities Exchange Act Release No. 34-49716 (May 17, 2004))

• In the May 19, 2004 *Federal Register*, the Commission published notice of filing of a proposed new rule (SR-NASD-2003-163) by the NASD that would permit parties in an arbitration to communicate directly with the arbitrators if all parties and arbitrators agree, and to establish guidelines for such direct communication.
(Securities Exchange Act Release No. 34-49688 (May 12, 2004))

• In the May 14, 2004 *Federal Register*, the Commission published notice of filing of a proposed rule change (SR-NASD-2004-016) by the NASD implementing a web-based arbitration claim notification and filing procedure.
(Securities Exchange Act Release No. 34-49673 (May 10, 2004))

• In the April 22, 2004 *Federal Register*, the Commission approved a rule change (SR-NASD-2003-95) amending NASD Rule 10308 and 10312. The rule modifies arbitrator classification and disclosure in NASD arbitrations.
(Securities Exchange Act Release No. 34-49573 (April 16, 2004))

A copy of the each notice is attached for reference.

Please contact me with any questions.

securities registered under Section 12 or 15(d) of the Exchange Act where transfer of such security to or from securities intermediaries is restricted or prohibited. The term "securities intermediary" would be defined in the rule as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. For purposes of the proposed rule, the term "equity securities" excludes securities issued by partnerships, as defined in § 229.901(b) of Regulation S–K, as well as any other equity security the Commission may exempt.

For further information, please contact Jerry Carpenter or Susan Petersen, at (202) 942–4187.

4. The Commission will hear oral argument on appeals by Clarke T. Blizzard and the Division of Enforcement from the decision of an administrative law judge. Blizzard was formerly a senior vice president and managing director of Shawmut Investment Advisers, Inc. ("Shawmut"). Rudolph Abel, formerly Shawmut's president and chief investment officer, opposes the Division's petition for review.

The law judge found that Blizzard willfully aided and abetted and caused violations of Section 206(1) and 206(2) of the Investment Advisers Act of 1940 by Shawmut. The law judge found that charges that Abel aided and abetted violations of those provisions were unproven because no primary violations by Shawmut were established during the period that Abel was employed at Shawmut. The law judge ordered Blizzard to cease and desist from committing or causing any violations or future violations of Section 206 of the Advisers Act; to disgorge commissions in the amount of $548,233, plus pre-judgment interest; to pay a civil money penalty of $100,000; and to be suspended for 90 days from association with an investment adviser.

Among the issues likely to be argued are:

1. Whether Shawmut committed the alleged primary violation on which aiding and abetting liability by Blizzard and Abel may be premised.

2. Whether Blizzard and Abel committed the alleged aiding-and-abetting violations.

3. If respondents committed violations, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, May 26, 2004, will be:

Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, May 27, 2004, will be:

Formal order of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and an adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 18, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–11655 Filed 5–19–04; 12:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49716; File No. SR–NASD–2003–164]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Adjournment of an Arbitration Hearing Within Three Business Days of the First Scheduled Hearing Session

May 17, 2004.

On November 4, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposal to amend the rules relating to the adjournment of a scheduled arbitration hearing. On March 5, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On April 1, 2004, NASD filed Amendment No. 2 to the proposed rule change.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on April 14, 2004.[5] No comments were received on the proposed rule change. This order approves the proposed rule change.

The proposed rule change will amend NASD IM–10104, Rule 10306, and Rule 10319 of the Code to impose a fee of $100 per arbitrator on parties and to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session.

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[6] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes the proposed rule change will provide NASD Dispute Resolution with an effective means of addressing the problems associated with last minute adjournments. The rule change should discourage frivolous adjournment requests while promoting more efficient use of the arbitration process by encouraging parties, when appropriate, to settle their disputes earlier to avoid additional fees. In addition, the Commission believes the proposed rule change should help NASD Dispute Resolution maintain a deep pool of qualified arbitrators by assuring arbitrators of some compensation in the event a scheduled hearing is adjourned at the last minute. In sum, the Commission believes that, by providing a more efficient and effective forum for investors to address grievances involving NASD members, the proposed rule change will serve to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2003–164) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated March 5, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

[4] *See* letter dated April 1, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

[5] *See* Securities Exchange Act Release No. 49545 (April 8, 2004), 69 FR 19887 (April 14, 2004).

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11519 Filed 5–20–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P033]

State of Arkansas

As a result of the President's major disaster declaration for Public Assistance on May 7, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Baxter, Boone, Carroll, Franklin, Jackson, Johnson, Madison, Marion, Newton, Searcy, Stone, Washington, and Woodruff Counties in the State of Arkansas constitute a disaster area due to damages caused by severe storms, flooding and landslides occurring on April 19, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 6, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Ft. Worth, TX 76155–2243.

The interest rates are:

	Percent
For Physical Damage:	
NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	2.750
NON-PROFIT ORGANIZATIONS WITH CREDIT AVAILABLE ELSEWHERE	4.875

The number assigned to this disaster for physical damage is P03311.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: May 17, 2004.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–11578 Filed 5–20–04; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Modification of Single Car Air Brake Test Procedures

In accordance with Part 232 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for modification of the single car air brake test procedures as prescribed in § 232.305(a). The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's argument in favor of relief.

The Association of American Railroads

[Docket Number FRA–2004–17566]

Pursuant to 49 CFR 232.307, the Association of American Railroads (AAR) seeks modification of the single car air brake test procedures, S–486, as prescribed in § 232.305(a) of the Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, AAR intends to remove all references to the flowrator method of testing brake cylinder leakage, and only permit the use of the gauge. The Sections, Paragraphs and Parts of S–486 that AAR request to be modified are as follows:

Original—3.1.2.6 Check the control valve pipe bracket, associated brake cylinder piping, and empty/load device for male brake cylinder pressure taps. If so equipped, apply a quick-disconnect coupling with a brake cylinder pressure test gauge.

Modification—3.1.2.6 Apply a brake cylinder pressure test gauge to the brake cylinder pressure tap.

Paragraphs 3.1.2.7 and 3.1.2.8 The contents of these two paragraphs are being eliminated.

Original—3.1.2.7 If the car being tested has certain wheel defects, a brake cylinder pressure tap must be installed. See the Field Manual of the AAR Interchange Rules, Rule 3, Chart A, for these defects. After the tap is installed, apply a cylinder test gauge. **Note:** If the car has the wheel defects shown in the Field Manual of the AAR Interchange Rules, Rule 3, Chart A, and has a pipe plug in the brake cylinder pipe, remove the plug and install an AAR-approved brake cylinder pressure measurement tap. If the car is equipped with an empty/load valve and the pipe plug is located upstream of the empty/load, install the brake cylinder pressure tap downstream of the empty/load valve. After the tap is installed, apply a cylinder test gauge.

Original—3.1.2.8 The preferred location of the male pressure tap is within a 2-ft radius around the exterior surfaces of the pipe bracket for single-capacity brake systems. For brake systems equipped with empty/load valves, the preferred location is within a 2-ft radius of the exterior surfaces of the empty/load valve, and the pressure tap must be located in the pipe from the empty/load valve(s) to the brake cylinder(s). The pressure tap may be located at the side sill of the car near the control valve or the empty/load valve if so equipped. See the AAR Manual of Standards and Recommended Practices, Standard S–4020, for a more detailed description of recommended pressure tap locations.

Paragraph 3.1.2.9 is being modified and renumbered as 3.1.2.7

Original—3.1.2.9 If the car is equipped with an empty/load device, the device must be set to the loaded position. For side frame sensing devices, place a block (2-in. minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National) or push in a plunger (WABTEC). **Note:** For cars equipped with empty/load devices, all test procedures must be performed in the loaded condition. Cars with empty/load devices that automatically reset to the empty position must be manually reset to the loaded condition for each of the tests defined here.

Modification—3.1.2.7 If the car is equipped with an empty/load device, the device must be set to the loaded position. For side frame sensing devices, place a block (2-in. minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National) or push in a plunger (WABTEC). **Note:** For cars equipped with empty/load devices, all test procedures must be performed in the loaded position. Cars with empty/load devices that automatically reset to the empty position must be manually reset to the loaded position for each of the tests defined here.

Original—3.5.1 With the control valve cut in, move the test device handle to position 1 and charge the system to 90 psi. Close the flowrator by-pass cock to determine if excessive leakage exists. Allow the ball to stabilize at its lowest reading. When the ball stabilizes at a point between the condemning line and the bottom of the tube, note the location of the top of the flowrator ball. Open the flowrator by-pass cock.

Modification—3.5.1 With the control valve cut in, move the test

permitting Exchange rules applicable to the trading of broad-based index options to apply to MidCap 400 options is appropriate. Specifically, the Commission believes it is consistent with the Act to designate the Index as broad-based because the MidCap 400 reflects a substantial segment of the U.S. equities market, in general, and mid-level capitalized U.S. securities, in particular. The Index consists of 400 of the most actively traded middle-capitalized securities in the United States.[21] In addition, as of January 6, 2004, the total capitalization of the Index was approximately $962.075 billion. The MidCap 400 also includes stocks of companies from ten market sectors, no one of which dominates the Index.[22] Moreover, the Index represents a broad cross-section of domestic mid-level capitalized stocks, with no single stock comprising more than 1.23% of the Index's total value (as of January 6, 2004). The percentage weighting of the five largest components in the Index also accounts for only 4.66% of the Index's value. Finally, 344 (86%) of the 400 stocks included in the Index, representing 88.1% of the total weight of the Index, are the subject of standardized options trading, and many of the other Index component stocks are eligible for options trading (as of January 6, 2004).

B. Index Design and Structure

The broad diversification, large capitalization, and liquid markets of the Index's component stocks significantly minimizes the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic mid-level capitalized stocks, with no single industry group or stock dominating the Index. Second, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 437,107 and 724,445 shares, respectively.[23]

Third, S&P has developed procedures and criteria designed to ensure that the Index maintains its broad representative sample of stocks in the middle-capitalization range of securities.[24] Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of a small number of issues would affect significantly the Index's value.

C. Surveillance

The Exchange represents that it has an adequate surveillance program in place for the Exchange's other index options (at present, options on the S&P SmallCap 600 Index) and intends to apply those same program procedures to the options on the Index. Additionally, the Exchange is a member of the Intermarket Surveliance Group ("ISG"), which allows for the sharing of surveillance information for potential intermarket trading abuses pursuant to the Intermarket Surveillance Group Agreement (the "Agreement").[25] The members of the ISG include all of the U.S. registered stock and options markets. The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchanges trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.

D. Market Impact

The Commission believes that the listing and trading of MidCap 400 options, including LEAPS and reduced-value LEAPS, on the Exchange will not adversely impact the underlying securities markets. First, as described above, the Index is broad-based and no one stock or industry group dominates the Index. Second, as noted above, the stocks contained in the Index have large capitalizations and are actively traded. Third, existing ISE stock index options rules and surveillance procedures will apply to MidCap 400 options. Fourth, the Exchange has established position and exercise limits for the MidCap 400 options that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like other standardized options traded in the United States.

Finally, the Commission believes that the ISE's other proposed rule changes to accommodate the trading of S&P MidCap 400 options, such as strike price intervals, are consistent with the Act. Based on representations from the ISE, the Commission also believes that the Exchange will have sufficient capacity to accommodate the anticipated order flow. The Commission also believes the Amex's proposed expiration cycle for the S&P MidCap 400 options is reasonable because it provides investors sufficient flexibility to establish their desired options positions.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change, as amended, (SR–ISE–2004–08) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11308 Filed 5–18–04; 8:45 am]

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[21] Specifically, the mean and median capitalization for the 400 companies, as of January 6, 2004, was $ 2.4 billion and $ 2.1 billion, respectively.

[22] Specifically, as of February 26, 2004, the ten market sectors along with their respective weighting in the Index was as follows: (1) energy, 5.5%; (2) materials, 6.3%; (3) industrials, 14.5%; (4) consumer discretionary, 16.3%; (5) consumer staples, 4.5%; (6) health care, 9.5%; (7) financials, 16.5%; (8) information technology, 19%; (9) telecommunications services, 0.8%; and (10) utilities, 7.3%.

[23] For the six-month period ending January 2004, 398 of the 400 (99.5%) companies within the Index had an average daily trading volume greater than 30,000 shares per day. Those companies represent 99.25% of the market capitalization of the Index. The average daily trading volume of the 20 most heavily traded companies in the Index, representing 7.51% of the market capitalization of the Index, was 3,784,032 shares per day.

[24] *See supra* notes 11–14 and accompanying text.

[25] ISG was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The participation of exchanges within the ISG and their sharing of surveillance information is governed by the Agreement. The most recent amendment to the Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by members January 29, 1990. *See* Second Amendment to Intermarket Surveillance Group Agreement, January 29, 1990.

[26] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49688; File No. SR–NASD–2003–163]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Voluntary Direct Communication Between Parties and Arbitrators

May 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. On February 23, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

* * * * *

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing a new rule of the NASD to permit parties in an arbitration to communicate directly with the arbitrators if all parties and arbitrators agree, and to establish guidelines for such direct communication. Below is the text of the proposed rule change. Proposed new language is in italics.

10334. Direct Communication Between Parties and Arbitrators

(a) This rule provides procedures under which parties and arbitrators may communicate directly.

(b) Only parties that are represented by counsel may use direct communication under this Rule. If, during the proceeding, a party chooses to appear pro se (without counsel), this Rule shall no longer apply.

(c) All arbitrators and all parties must agree to the use of direct communication during the Initial Prehearing Conference or a later conference or hearing before it can be used.

(d) Parties may send the arbitrators only items that are listed in an order.

(e) Parties may send items by regular mail, overnight courier, facsimile, or email. All the arbitrators and parties must have facsimile or email capability before such a delivery method may be used.

(f) Copies of all materials sent to arbitrators must also be sent at the same time and in the same manner to all parties and the Director. Materials that exceed 15 pages, however, shall be sent to the Director only by regular mail or overnight courier.

(g) The Director must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators.

(h) Parties may not communicate orally with the arbitrators outside the presence of all parties.

(i) Any party or arbitrator may terminate the direct communication order at any time, after giving written notice to the other arbitrators and the parties.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD proposes a rule that would permit direct communication with the arbitrators where all parties and arbitrators agree. The rule also would establish guidelines for direct communication.

Background. Under normal procedures, parties may exchange certain documents among themselves (such as those relating to discovery), but must address all communications intended for the arbitrators to NASD staff, who then forward the communications to the arbitrators. If the communication includes a motion or similar request, staff members customarily solicit a response from the other parties before forwarding the motion or request. Similarly, the arbitrators transmit their orders and any other communications through the staff.

In response to a recommendation of the NASD National Arbitration and Mediation Committee, the Chicago Office of NASD Dispute Resolution began a pilot project in June 2001 to determine whether direct communication between parties and arbitrators would enhance the arbitration process. The Chicago Office developed the parameters governing whether a case would be eligible for inclusion in the pilot and changed the script used by the panel chairperson at the Initial Prehearing Conference ("IPHC") on those cases. A modified IPHC Order also was given to the panel chairperson to memorialize all direct communication matters agreed to by the parties and the arbitrators.

In total, 839 cases were eligible for inclusion in the project. Of these cases, parties and arbitrators in 255 cases (30%) participated in the program. At the end of the one-year pilot period, staff formulated a survey for those arbitrators and party representatives who participated in the pilot project. NASD Dispute Resolution sent out 850 surveys and obtained 268 responses (32%). Although attempts were made to limit duplication, certain arbitrators and party representatives who participated in more than one eligible case in the pilot might have sent in multiple survey responses.

Of the responses NASD received, 193 came from arbitrators and 75 from party representatives. Overall, 73% of party representatives and 69% of the arbitrators who responded to the survey favored continuing direct communication with the arbitrators. Favorable comments reflected the opinion that direct communication expedited the arbitration process and was more convenient than the normal method of communicating through staff.

In light of the success of the Chicago pilot, NASD has developed a nationwide rule that would permit direct communication with the arbitrators where all parties and arbitrators agree. The rule also would establish guidelines for direct communication.

On October 2, 2002, the Securities Industry Conference on Arbitration ("SICA")[4] adopted an amendment to Rule 23 of the Uniform Code of Arbitration that provides for joint administration of arbitrations by the arbitrators and the parties.[5] Like the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jean Feeney, Vice President and Chief Counsel, Dispute Resolution, NASD to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated February 20, 2004.

[4] SICA's voting members include representatives of the self-regulatory organizations that administer arbitration forums, the Securities Industry Association, and three members of the public. In addition, staff of the SEC, the Commodity Futures Trading Commission, the American Arbitration Association, the North American Securities Administrators Association, and the former public members of SICA are invited to attend meetings.

[5] The joint administration amendment is found in section 23(e) of the Uniform Code, which is included in the Twelfth Report of the Securities Industry Conference on Arbitration (October 2003), available on the NASD Dispute Resolution Web site, under both Resources for Parties and Resources for Neutrals.

NASD proposal, the SICA rule would apply only to matters in which all parties are represented by counsel, and in which the arbitrators and all parties agree to proceed under the rule; terminates if a party chooses to appear without counsel; prohibits oral communication between parties and arbitrators unless all parties are present; and requires parties to send written materials to the arbitrators and the director at the same time and in the same manner. Unlike the NASD proposal, the SICA rule would allow the arbitrators, without the assistance of the sponsoring self-regulatory organization, to "schedule all pre-hearing and hearing dates, the timing of the service and filing of appropriate papers, all discovery matters and all other matters relevant to the expeditious handling of the case." The SICA rule allows the parties or the arbitrators to initiate conference calls under certain conditions; requires that parties send the director proof of service of written materials; and provides that the arbitrators may terminate or modify any joint administration order. The NASD rule, unlike the SICA rule, provides that parties may send the arbitrators only items that are listed in an arbitrator order; that materials that exceed 15 pages may only be sent to the director by regular mail or overnight courier; and that any party or any arbitrator may terminate the direct communication order. NASD understands that the SICA rule change has not been adopted by any self-regulatory organization. The National Arbitration and Mediation Committee and the Board were apprised of the SICA amendment, but determined to model the NASD proposal on the successful Chicago pilot described above.

Proposed Rule Change. The proposed rule is based largely on procedures used in the Chicago pilot, with a few changes to reflect staff's experience with the pilot and to provide for possible issues that might occur in a larger-scale application of the rule. Only parties that are represented by counsel may use direct communication under the proposed rule. If, during the proceeding, a party chooses to appear pro se (without counsel), the rule will no longer apply. All arbitrators and all parties must agree to the use of direct communication before it can be used. The scope of direct communication will be set forth in an arbitrator order, and parties may send the arbitrators only the types of items that are listed in the order.

The proposed rule provides that either an arbitrator or a party may rescind his or her agreement at any time if direct communication is no longer working well. Materials must be sent at the same time and in the same manner to all parties and the Director (through the assigned staff member), and staff must receive copies of any orders and decisions made as a result of direct communications among the parties and the arbitrators. As requested by staff of NASD Dispute Resolution, however, the rule contains a provision stating that materials more than 15 pages long shall be sent to the Director only by mail or courier, to avoid tying up busy fax machines and printers. Arbitrators (or parties) with similar concerns could include a similar provision as to themselves in the direct communication order. NASD will prepare a template for direct communication orders to guide the arbitrators and parties in considering these issues.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that permitting direct communication with the arbitrators where all parties and arbitrators agree, and where specific guidelines are followed, will protect investors and the public interest by expediting the arbitration process and giving parties more control over their arbitration cases.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2003–163

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2003–163. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–

[6] 15 U.S.C. 78o–3(b)(6).

2003–163 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11258 Filed 5–18–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49682; File No. SR–NYSE–2004–09]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 To Amend NYSE Rule 123C Relating to Market-on-Close Policy and Expiration Procedures

May 11, 2004.

I. Introduction

On February 19, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 123C relating to Market-on-Close Policy and Expiration Procedures. The proposed rule change was published for comment in the **Federal Register** on April 1, 2004.[3] The Commission received no comments on the proposal.

On April 26, 2004, the Exchange amended the proposed rule change.[4] Amendment No. 1 adds "LOC" to the first sentence of section (3)(B) of NYSE Rule 123C, which was inadvertently excluded from the rule text of the Exchange's original filing.

This order approves the proposed rule change. Simultaneously, the Commission provides notice of filing of Amendment No. 1 and grants accelerated approval of Amendment No. 1.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

The Commission believes the electronic entry of all market-on-close ("MOC") and limit-on-close ("LOC") orders may allow market participants greater control in active trading crowds, and may enhance the dissemination of accurate information to all participants, because publications will be systematically generated. Furthermore, the Commission believes that moving the MOC and LOC deadline from 3:40 p.m. to 3:50 p.m. may allow traders and floor brokers greater control over the execution of customer orders and greater participation in active markets. The Exchange stated that its electronic entry systems for MOC and LOC order processing would require technology upgrades. Accordingly, the Exchange has represented that it will notify the Exchange membership and the Commission of the timing and implementation of such electronic entry systems.

For these reasons, the Commission finds that the proposed rule change is consistent with the Act.[7]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 added "LOC" to the first sentence of section (3)(B) of NYSE Rule 123C. Since Amendment No. 1 makes only a technical change to the proposed rule text, the Commission finds good cause to accelerate approval of Amendment No. 1 to the proposed rule change.[8]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–09 and should be submitted on or before June 9, 2004.

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[7] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49476 (March 25, 2004), 69 FR 17255.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 26, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE corrected a typographical error. Additionally, the NYSE confirmed that by making this correction to paragraph (3)(B) of the proposed rule language, the NYSE clarifies what is established NYSE practice where there is no order imbalance. Amendment No. 1 does not expand the scope of the proposed rule change, but instead only clarifies rule language that represents existing practices at the NYSE. *See,* telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Joseph P. Morra, Special Counsel, Division, Commission, dated May 10, 2004.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See* footnote 4, *supra.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD proposes to raise the fee for panel member training from $100 to $125 for all applicants who register for the training after the proposed rule change becomes effective. This increase is intended to offset increased costs of providing the panel member training program, due primarily to increased room rental and staff travel costs. The proposed increase of $25 per trainee also will allow NASD to increase the honorarium provided to arbitrators who serve as co-trainers for the programs.

Dispute Resolution staff plans to extend the length of the current four-hour training program to cover additional subject matter. Following approval of the proposed rule change, the usual panel member training program will consist of a four-hour morning session, followed by a two-hour afternoon session.[4] During the afternoon session, staff and the designated co-trainer, who is an arbitrator on the roster, will facilitate a videotaped training on civility. In light of the increased length of the training session, NASD plans to raise the honorarium of each co-trainer from $300 for a four-hour program to $400 for a six-hour program.

NASD believes the increase in the training fee will enable it to provide in-depth arbitrator training, which will improve the quality of the arbitrator roster. Moreover, NASD believes this nominal increase is an equitable allocation of reasonable fees among persons using an NASD system or facility.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the minimal increase in the in-person panel member training fee will help NASD improve the knowledge and experience of arbitrators and thus, improve the quality of the NASD arbitration forum.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–001 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–001 and should be submitted on or before June 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–10952 Filed 5–13–04; 8:45 am]

BILLING CODE 8010–01–P

[4] NASD room rental expenses will not increase, because rates quoted are for the entire business day.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49673; File No. SR–NASD–2004–016]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Implementation of a Web-based Arbitration Claim Notification and Filing Procedure

May 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2004, the National Association of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On February 25, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On April 16, 2004, NASD filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Statement of Claim

(1) The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(2) A Claimant or counsel (referred to herein collectively as "Claimant") may use the online claim notification and filing procedure to complete part of the arbitration claim filing process through the Internet. To commence this process, a Claimant may complete a Claim Information Form that can be accessed through an NASD Web site. In completing the Claim Information Form, the Claimant may attach an electronic version of the Statement of Claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, an NASD Dispute Resolution Tracking Form will be generated and displayed for the Claimant to reproduce as necessary. The Claimant shall then file with the Director of Arbitration the rest of the materials required in subparagraph (1), above, along with a hard copy of the NASD Dispute Resolution Tracking Form.

(Remainder of rule unchanged.)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Dispute Resolution proposes to amend NASD Rule 10314(a) to allow parties to complete part of the arbitration claim filing process through the Internet.

Background

NASD Dispute Resolution is upgrading its computer technology platform, in what is known as the MATRICS[5] Computer Project, which will replace its two legacy case management systems: CRAFTIS[6] and NLSS.[7] Before the upgrade is complete, the MATRICS Computer Project will be implemented in a series of overlapping releases between the second quarter of 2003 and the fourth quarter of 2005. A significant component of this upgrade includes the development of an online, Web-based arbitration claim notification and filing system. The release to implement this component of the upgrade was originally scheduled for deployment in 2005, but has taken less time than anticipated to design and develop. Once this component of the release had been tested, NASD decided to accelerate the implementation of the online claim notification and filing procedure, to the first quarter of 2004.

Current Procedures for Filing and Processing an Arbitration Claim

Currently, if a party wants to file an arbitration claim, a package of materials is sent to the party to complete.[8] The materials contain a Claim Information Sheet that NASD Dispute Resolution asks the party to complete on a voluntary basis. The Claim Information Sheet gathers key data about the claim and the parties and serves as a reliable source of background information for intake staff.[9] Once the party has completed the materials, the party then completes the claim filing process by submitting the Statement of Claim, executed Uniform Submission Agreement, and filing fee and hearing session deposit through the mail.[10]

When the intake staff in New York receives the Claimant's materials, they enter this new claim information into NASD's CRAFTIS computer system. This process requires manual entry of data by at least two staff members in different offices. For example, when a new claim is received, a staff member in New York opens a case file by reviewing either the Statement of Claim or the Claim Information Sheet, if it is submitted, and by inputting the claim information in a new CRAFTIS file. Once this process is complete, the case is assigned to the appropriate NASD Dispute Resolution regional office, where another staff member performs an analysis of the claim documents and then manually enters more data (*i.e.*, party information, type of dispute, fees, and relief requested) into this CRAFTIS file. This process requires the staff member to analyze the case to determine what information must be entered into CRAFTIS and to input the data into the system. This stage of the process usually takes an average of 30 minutes per case.

The Effects of the Online Claim Notification Procedure

The proposed rule change would modify how an arbitration claim is filed in several ways. In the package of information sent to the Claimant or

[3] *See* letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated February 24, 2004.

[4] *See* letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2004.

[5] MATRICS stands for Mediation and Arbitration Tracking Retrieval Interactive Case System.

[6] CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration function. It uses an old technology platform and is not Web-based.

[7] NLSS stands for the Neutral List Selection System, which is the computer program NASD uses to appoint arbitrators on a rotational basis.

[8] Parties may also download this information from NASD Dispute Resolution's Web site.

[9] NASD Dispute Resolution estimates that the sheet is submitted in approximately 75% of the arbitration cases filed.

[10] Pursuant to the Code, "mailing" can be accomplished by first-class postage pre-paid, overnight mail service, method of delivery acceptable to the parties and the Director.

counsel (referred to herein collectively as "Claimant"), in addition to a Claim Information Sheet, there will be instructions on how to submit a Claim Information Form online, including procedures for accessing the system. Prior to submitting a claim for the first time, a Claimant will obtain a User Identification name ("User ID") and password through a self-registration process on the NASD Web site. Repeat Claimants, and attorneys who are submitting new claims on behalf of different Claimants, may continue to use their User ID and password to enter data for new cases.

The proposed rule change would allow a Claimant to commence the arbitration claim filing process by completing a Claim Information Form online that can be accessed through an NASD Web site.[11] The Claim Information Form has been upgraded to allow the Claimant to attach an electronic version of the Statement of Claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, the Claimant will be prompted to print the NASD Dispute Resolution Tracking Form ("Tracking Form"). The Claimant would then complete the claim filing process by filing a copy of the Tracking Form, the Statement of Claim (if it has not been submitted electronically), an executed Uniform Submission Agreement, and the filing fee and hearing session deposit through the mail, as is current practice.[12]

Benefits of the Online Claim Notification Procedure

The online version of the Claim Information Form would gather information similar to the paper version currently in use, but the format would be upgraded to provide:

- A "look up" tool, that will be used to provide the exact name of the member or associated person for automatic insertion into the Claim Information Form;
- A link to the fee calculators, which will calculate the amount that should be remitted with the Statement of Claim; and
- "Tool tips" to help the Claimant navigate the Claim Information Form.

These enhancements will enable Claimants to enter the required information more quickly and accurately. For example, the Claim Information Form will require that the Claimant list those members or associated persons who would be parties to the claim. The Claim Information Form "look up" tool will provide the exact name of the member or associated person. Once the Claimant has found the requisite information, the system will allow the Claimant to load the information automatically into the form fields, thus minimizing transcription errors. If, after a search using the "look up" tool, the Claimant is unable to find the requisite information, the Claimant may type whatever information the Claimant has into a text box on the form for intake staff to analyze.

The Claim Information Form will also provide a link to the existing online fee calculator, to assist the Claimant in determining the correct amount of fees and deposits associated with the claim.

Further, the Claim Information Form will provide on-screen guidance to Claimants through "tool tips," which are small help screens that can be displayed in order to assist the Claimant in completing certain data elements.

Once the Claimant has completed the Claim Information Form, the system will generate a Tracking Form that will summarize the Claimant's entries for review and provide a tracking number for the claim. Prior to submission, the Claimant will be prompted to print a hard copy of the Tracking Form to file with the other documentation to NASD Dispute Resolution. The system will also encourage the Claimant to print a copy as a receipt. The remaining aspects of the claim filing procedure remain unchanged from the Claimant's perspective.

The intake staff in New York will be notified that a claim has been electronically submitted when it receives the Claimant's materials in hard copy with the Tracking Form attached. The intake staff will access the system and, using the tracking number or some other identifying information, locate the Claimant's data. The data will be stored in a secure "holding area" in the system, where an intake staff member will verify it, and then upload it into the CRAFTIS system. The uploaded data will instantly be transferred to the screens currently completed manually by applicable staff. Once this process is completed, the Claimant's file will be transferred to the appropriate NASD Dispute Resolution regional office, where the staff member will be able to analyze the case without having to input data into CRAFTIS.

Conclusion

NASD Dispute Resolution believes that the online claim notification procedure will expedite the case intake process, provide better data accuracy, reduce manual data entry, and provide for more efficient claims intake and administration. Moreover, NASD Dispute Resolution believes that the implementation of a Web-based arbitration claim notification and filing system is a positive step toward streamlining the claim filing process and providing global access to potential filers.[13]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[14] which require, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In light of recent regulatory developments in the securities markets, NASD believes the proposed rule change will enhance the efficiency of the NASD arbitration forum, by providing a better mechanism to process new claims expeditiously.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[11] The current Web site address for the online claim filing system is *http://www.nasdadr.com/uniform_forms_guide.asp*.

[12] Submission of documents through this online notification system does not alter the date a claim is filed; rather, filing a claim requires submission of documentation pursuant to Rule 10314(a).

[13] NASD believes that most potential filers have access to the Internet. During the transition from paper filing to the online claim notification and filing procedure, NASD staff will work with any Claimants who have technological problems with using this system.

[14] 15 U.S.C. 78o–3(b)(6).

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–016 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number and should be submitted on or before June 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–10953 Filed 5–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49667; File No. SR–NASD–2004–073]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Change the Minimum Term for Selected Equity-Linked Debt Securities

May 7, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under subparagraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD Rule 4420(g) to reduce the minimum term of Selected Equity-linked Debt Securities ("SEEDS") from two years to one year.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[5]

* * * * *

4420. Quantitative Designation Criteria

(a) through (f) No change

(g) Nasdaq will consider designating as Nasdaq National Market securities Selected Equity-linked Debt Securities (SEEDS) that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) underlying such equity securities).

(1) No change

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

(A) through (C) No change

(D) a term of *one* [two] to seven years; provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR, the issue may not have a term of more than three years.

(3) through (5) No change

(h) through (l) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change reduces from two years to one the minimum term of SEEDS that may qualify for Nasdaq National Market designation

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] As required by 17 CFR 240.19b–4(f)(6), Nasdaq has represented that the proposed rule change will not significantly affect the protection of investors or the public interest, nor will it impose any significant burden on competition. Nasdaq also fulfilled its obligation to provide at least five business days notice to the Commission of its intent to file this proposed rule change by notice on April 16, 2004. The NASD's proposed rule change is similar to the rules regarding the minimum term of equity-linked debt securities for the American Stock Exchange LLC ("Amex"), the Chicago Stock Exchange, Inc. ("CHX"), and the New York Stock Exchange, Inc. ("NYSE").

[5] The proposed rule change is marked to show changes to NASD Rule 4420(g) as currently reflected in the NASD Manual available at *www.nasd.com.* No other pending or approved rule filings would affect the text of Rule 4420(g).

For further information, please contact Lourdes Gonzalez at (202) 942–0098, Linda Stamp Sundberg at (202) 942–0073, Bonnie Gauch at (202) 942–0765, Rose Wells at (202) 942–0143, or Matt Comstock at (202) 942–0156.

The subject matter of the Closed Meeting scheduled for Thursday, April 29, 2004 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Consideration of amicus participation; an adjudicatory matter; and an Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 20, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9344 Filed 4–20–04; 3:59 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49573; File No. SR–NASD–2003–95]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change Relating to Arbitrator Classification and Disclosure in NASD Arbitrations

April 16, 2004.

I. Introduction

On June 12, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain sections of the NASD Code of Arbitration Procedure ("Code") relating to arbitrator classification and disclosure in NASD arbitrations. The proposed rule change was published for comment in the **Federal Register** on August 21, 2003.[3] The Commission received eight comment letters on the proposal.[4] NASD submitted two letters in response to these comments.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under the proposal, Rules 10308 and 10312 of the Code would be amended to: (1) Modify the definitions of public and non-public arbitrators; (2) provide specific standards for deciding challenges to arbitrators for cause; and (3) clarify that compliance with arbitrator disclosure requirements is mandatory.

Specifically, the proposed rule change would amend the definition of non-public arbitrator in Rule 10308(a)(4) of the Code to: (1) Increase from three years to five years the period for transitioning from an industry to public arbitrator; and (2) clarify that the term "retired" from the industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the proposed rule change would amend the definition of public arbitrator in Rule 10308(a)(5)(A) of the Code to: (1) Prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how many years ago the association ended; (2) exclude from the definition of public arbitrator, attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator; and (3) provide that investment advisers may not serve as public arbitrators and may only serve as non-public arbitrators if they otherwise qualify under Rule 10308(a)(4) of the Code. The proposed rule change would also amend the definition of "immediate family member" in Rule 10308(a)(5)(B) of the Code to add parents, children, stepparents, stepchildren, as well as any member of the arbitrator's household.

The proposed rule change would also amend Rules 10308(d) and 10312(d) of the Code to provide that a challenge for cause will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. In addition, the proposal would amend Rule 10308 of the Code to add a new paragraph (f) which would provide that close questions regarding arbitrator classification or challenges for cause brought by a public customer would be resolved in favor of the customer. Lastly, NASD proposed to amend Rule 10312(a) and (b) of the Code to clarify that arbitrators must disclose the required information and must make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary.

III. Summary of Comments

As noted above, The Commission received eight comment letters on the proposal.[6] NASD submitted two letters in response to these comments.[7]

PIABA supported the proposal as a "positive and significant step toward the elimination of the appearance of pro-industry bias in the roster of those eligible to sit as 'public' arbitrators in NASD arbitrations.[8] PIABA, however, suggested that NASD consider further steps, such as eliminating all banking and insurance personnel from the public arbitrator pool, and categorizing all professional partners of all non-public arbitrators as non-public regardless of whether the partner's firm meets the proposed 10% threshold under Rule 10308(a)(5)(A)(iv) of the Code.[9]

Some commenters believed that the proposed amendments to Rule 10308(a)(5)(A)(iv) of the Code to classify as non-public arbitrators an attorney, accountant or other professional whose firms derived more than 10 percent of its revenue from the industry in the last two years from securities industry clients is too lenient and should go farther.[10] NELA suggested that attorneys whose firm represent industry members

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48347 (August 14, 2003), 68 FR 50563.

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Joseph O'Donnell, dated July 16, 2003 ("O'Donnell Letter"); Cliff Palefsky, Co-Chair, ADR Committee, National Employment Lawyers Association ("NELA"), dated September 9, 2003 ("NELA Letter"); Stephen G. Sneeringer, Senior Vice President and Counsel, A.G. Edwards & Sons, Inc., dated September 9, 2003 ("A.G. Edwards Letter"); Edward Turan, Chair, Securities Industry Association ("SIA") Arbitration Committee, SIA, dated September 11, 2003 ("SIA Letter"); Charles W. Austin, Jr., Vice-President/President Elect, Public Investor Arbitration Bar Association ("PIABA"), dated September 11, 2003 ("PIABA Letter"); James Dolan, Attorney and Counselor, dated October 8, 2003 ("Dolan Letter"); and Richard P. Ryder, President, Securities Arbitration Commentator, Inc. ("SAC"), dated October 23, 2003 ("SAC Letter"). See also e-mail to *rules-comments@sec.gov* from *ProfLipner@aol.com* dated September 23, 2003 ("Lipner Letter").

[5] *See* letters to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, from Laura Ganzler, Counsel, NASD, dated September 30, 2003 and February 2, 2004 ("NASD's Response").

[6] *See supra* note 4.

[7] *See supra* note 5.

[8] *See* PIABA Letter.

[9] *See* PIABA Letter.

[10] *See* NELA Letter, PIABA Letter.

should be classified as non-public arbitrators regardless of the dollar volume of the business because incentive to favor the industry is "too obvious too ignore."[11]

A.G. Edwards, although generally supportive of the proposed rule change, argued that to exclude from the definition of public arbitrator any "attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years' from any persons or entities involved in the securities industry is too broad.[12] SAC also objected to this exclusion from the definition of public arbitrator.[13] They believed this provision could limit the depth of the NASD arbitrator pool and argue that excluding such persons from serving as public arbitrators is overly broad and not supported by clear evidence that such persons are actually biased in favor of the industry. A.G. Edwards suggested that the possible disclosure of revenue sources by potential arbitrators may also dissuade potential arbitrators from participating.[14] In response, NASD stated that it took this concern into account and has concluded that the amendment, if approved, will not adversely impact its ability to panel cases. NASD also disagrees that the proposed provision unnecessarily excludes categories of persons from serving as public arbitrators. In its response, NASD stated that the new provision is not intended to eliminate only persons with actual bias, but also persons who could reasonably be perceived to be biased. NASD pointed to a report by Professor Michael Perino which noted, "no classification rule could ever precisely define public and non-public arbitrators; there will always be classification questions at the margins about which reasonable people will differ."[15] Given the inherently imprecise nature of such definitions, NASD stated that to protect both the integrity of the NASD forum, and investors' confidence in the integrity of the forum, it prefers the definition of public arbitrator to be overly restrictive rather than overly permissive.

SAC also questioned why the proposal to exclude from the definition of public arbitrator any "attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years" from any persons or entities involved in the securities industry differs from a similar provision adopted by the Securities Industry Conference on Arbitration ("SICA"), which would impose a 20% threshold.[16] NASD stated that it carefully considered SICA's proposal. However, NASD stated that the Board of Directors of NASD Dispute Resolution, Inc. and its National Arbitration and Mediation Committee concluded that the proposed rule change would best protect the integrity of the NASD forum from both the reality and perception of impartiality.

In addition, both SIA and A.G. Edwards specifically objected to the use of the terms "professional" and "firm" in proposed Rule 10308(a)(5)(A)(iv), which they argue are overly vague and overbroad. In response, NASD stated that it does not believe that the term "professional" or the term "firm" would prove to be problematic in practice. NASD noted that the term "professional" is used elsewhere in current Rule 10308 of the Code and has not been the source of confusion or controversy in the past. NASD sees no reason to believe that the use of the term "professional" or "firm" in the proposed provision will be any more problematic in practice than the use of the term "professional" or the term "business activities" elsewhere in the rule.

Mr. Dolan and SIA also argue that the proposed amendment to Rule 10308(a)(5)(B)(i) of the Code to include in the definition of family member the parent, child, stepparent, and stepchild of a person in the industry is too broad and would also severely reduce number of competent candidates eligible to serve as public arbitrators.[17] Mr. O'Donnell objected to including an arbitrator's "emancipated sons and daughters engaged in securities related work" in the proposed definition of family member and stated that this relationship should be disclosed but not be grounds for disqualification from the definition of public arbitrator.[18] In response, NASD stated that the proposed expansion of the definition of "immediate family member" was developed in light of the Perino Report, which recommended that NASD consider expanding the definition of "immediate family member" to include parents and children, even if the parent or child does not share a home with or receive substantial support from, a non-public arbitrator.[19] Although the Perino Report referred only to parents and children, NASD believes that the same rationale applies to stepparents and stepchildren and therefore proposed to include such relationships in the definition as well. NASD stated that it believes the expansion of the definition of "immediate family member" would enhance the overall fairness of NASD's arbitration forum, as well as the investing public's confidence in the fairness and integrity of the forum.

Mr. O'Donnell objected that the proposal excluded investment advisers from the definition of public arbitrators in Rule 10308(a)(5)(iii) of the Code.[20] Mr. O'Donnell further argued that the proposal failed to draw a distinction between "commission based" and "fee only" investment advisors and between independent investment advisors and those affiliated with a broker-dealer.[21] In response, NASD noted that the SICA adopted a similar amendment to its Uniform Code of Arbitration. NASD further stated that it believes the pool of qualified public arbitrators will remain deep and that the benefits of bolstering investor confidence in the integrity of the NASD arbitration process outweigh the loss of some individual investment advisers from the roster.

Lastly, Professor Lipner suggested that NASD bar all persons with ties to banks or related institutions from serving as public arbitrators.[22] NASD responded that it believes this suggestion is outside of the current proposal.

IV. Discussion

After careful consideration of the proposed rule change, the comment letters, and NASD's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[23] and,

[11] *See* NELA Letter.

[12] *See* A.G. Edwards Letter. *See also* SIA letter. SIA stated that even though it believes the 10 percent threshold to be too low, that such a provision deems as pro-industry any person whose firm meets the 10 percent threshold and that this proposal would remove many members of the plaintiffs' bar employed by firms who represent broker-dealers in employment actions against their employers.

[13] *See* SAC Letter.

[14] *See* A.G. Edwards Letter.

[15] *See* Michael A. Perino, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations*, November 4, 2002 ("Perino Report").

[16] *See* SAC Letter.

[17] *See* Dolan Letter, SIA Letter.

[18] *See* O'Donnell Letter.

[19] *See* Perino Report, *supra* note 15. NASD clarified that when the "immediate family member" has not been associated with the securities industry for five years, as specified by Rule 10308(a)(4)(A) of the Code, the "immediate family member's" past affiliation would cease to be a basis to exclude an individual from serving as a public arbitrator pursuant to Rule 10308(a)(5)(A)(i) of the Code. Telephone conversation between Florence Harmon, Senior Special Counsel, Division, Commission, from Laura Ganzler, Counsel, NASD, on March 10, 2004.

[20] *See* O'Donnell Letter.

[21] *See* O'Donnell Letter.

[22] *See* Lipner Letter.

[23] In approving this proposed rule change, the Commission notes that it has considered its impact

in particular, the requirements of section 15A of the Act[24] and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,[25] which, among other things, requires that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

At the Commission's request, Professor Michael Perino issued a report assessing the adequacy of NASD's and New York Stock Exchange, Inc.'s ("NYSE") arbitrator disclosure requirements and evaluating the impact of the recently adopted California Ethics Standards[26] on the current conflict disclosure rules of the self-regulatory organizations ("SROs").[27] The Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Perino Report, might "provide additional assurance to investors that arbitrations are in fact neutral and fair." The Commission believes that this proposed rule change implements those recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations.

Specifically, the Commission finds that NASD's proposal to amend the definition of non-public arbitrator in Rules 10308(a)(4) and 10308 (5)(A) of the Code is consistent with the Act. NASD's proposal, among other things, to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined as non-public is reasonably designed to reduce a perception of bias by NASD arbitration panel members. Some commenters argued that professional partners of all persons described in Rule 10308(a)(4)(C) of the Code be categorized as non-public regardless of whether the partner's firm meets the proposed 10 percent threshold while others argued that the 10% threshold is too broad and will adversely impact the depth of the pool of potential arbitrators. NASD's proposal to expand the definition of "immediate family member" in Rule 10308(a)(5)(B) of the Code to include parents, stepparents, children, or stepchildren, as well as any member of the arbitrator's household is also consistent with the Act. Some commenters objected to this expansion of the definition of "immediate family member" stating that it too would reduce the number of competent candidates to serve as public arbitrators.

The Commission believes that NASD proposal to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator is reasonably designed to reduce a perception of bias by NASD arbitration panel members. In addition, the Perino Report recommended that NASD consider an expansion of the definition of "immediate family member" to include parents and children, even if the parent or child do not share the same home or receive substantial support from a non-public arbitrator.[28] NASD considered the issue and determined to expand the term. The Commission also believes it is reasonable for NASD to further expand the definition of non-public arbitrator by including stepparents and step children as well as parents, children, and any household member in the definition of immediate family member. The Perino Report also noted that "no classification rule could ever precisely define public and non-public arbitrators; there will always be classification questions at the margins about which reasonable people will differ."[29] Thus, the Commission believes that the amendments to the definition of public arbitrator, including the 10 percent threshold and definition of "immediate family member" are consistent with the Act.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (File No. SR–NASD–2003–95) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9163 Filed 4–21–04; 8:45 am]

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on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78*o*–3.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] *See* California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration."

[27] *See* Perino Report, *supra* note 15.

[28] *See id.*

[29] *See id.*

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49569; File No. SR–PCX–2004–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Clarify the PCX General Membership Fees Portion of the PCX Schedule of Fees and Charges

April 15, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 14, 2004, the Exchange amended the proposed rule change.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 13, 2004 letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change. In Amendment No. 1, the PCX asks the Commission to review the proposed rule change pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. The Commission considers the original proposed rule change to have satisfied the five-day pre-filing notice requirement under Rule 19b–4(f)(6). Additionally, for purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 14, 2004, the day the PCX filed Amendment No. 1. 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).