SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49845; File No. SR-NASD-2003-69)

June 10, 2004

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Failure to Pay Arbitration Awards

I. Introduction

On April 7, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 (1) to amend Article V, Section 4 of the NASD By-Laws to permit NASD to suspend for failure to pay an arbitration award or settlement, for a period of two years after the award is entered, former associated persons who terminated their registration before the award was entered; and (2) to amend Article VI, Section 3 of the NASD By-Laws to clarify that NASD may suspend the association, and not just the registration, of any person who fails to pay an arbitration award. Notice of the proposed rule change was published for comment in the Federal Register on May 7, 2004.[3] The Commission received one comment on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change amends Article V, Section 4 of the NASD By-Laws to provide that, for the limited purpose of instituting proceedings for failure to pay arbitration awards or

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 49636 (April 30, 2004), 69 FR 25652 ("Notice").

4 See e-mail dated May 28, 2004 from Douglas K. Traynor. The e-mail did not raise any issues with respect to the substance of the proposed rule change.

settlements, NASD retains, for a period of two years after the entry of the award or settlement, jurisdiction to impose suspensions against former associated persons if the award or settlement resulted from a claim submitted for arbitration or mediation pursuant to the NASD Rules. The proposal addresses NASD's concern that a person associated with a member will terminate his or her association with the member once aware that an arbitration award may be entered against him or her in order to avoid sanction by NASD for failure to pay any award or settlement agreement resulting from the proceeding. In addition, the proposed rule change amends Article VI, Section 3 of the NASD By-Laws to clarify that NASD may suspend any person from associating with a member in any capacity for failure of such person to comply with an arbitration award or settlement.

III. Discussion

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.[5] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[6] 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 that the amendments should improve NASD's ability to ensure that its membership is not likely to engage in conduct that may be harmful to public investors. The Commission notes that the proposed rule change strengthens NASD's ability to prevent persons who fail to honor securities-related arbitration awards from seeking to re-enter the securities business, and clarifies

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5 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).

6 15 U.S.C. 78o-3(b)(6).

that persons who fail to honor such awards may be suspended from associating with NASD members in any capacity.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-NASD-2003-69) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland
Deputy Secretary

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7 15 U.S.C. 78s(b)(2).

8 17 CFR 200.30-3(a)(12).