

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55703; File No. SR-NASD-2007-026)

May 3, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement Technical Changes to the Customer, Industry and Mediation Codes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2007 the National Association of Securities Dealers, Inc. (“NASD ”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”) 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 substantially prepared by NASD Dispute Resolution. NASD has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

NASD Dispute Resolution is proposing to amend the NASD Codes of Arbitration Procedure for Customer Disputes (“Customer Code”) and for Industry Disputes (“Industry Code”), and to amend the NASD Code Mediation Procedure (“Mediation Code”) (collectively, the “Codes”) to delete rule language that was rescinded prior to the approval of the Codes, to change a reference that was amended by a separate NASD proposal, and to insert rule language that was approved by the Commission prior to its approval of the Customer and Industry Codes, but was inadvertently omitted from the Customer and Industry Codes. Proposed new language is in italics; proposed deletions are in brackets. The text of the proposed rule change is available at NASD, on NASD’s Web site (<http://www.nasd.com>) and at the Commission’s Public Reference Room.

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

Recently, NASD reorganized its dispute resolution rules (Rules 10000 *et seq.*) into three separate procedural codes: the Customer Code; the Industry Code; and the Mediation

Code.<sup>5</sup> The Customer, Industry and Mediation Codes replaced the NASD Code of Arbitration Procedure (“old Code”) in its entirety.

The Commission approved the Mediation Code on October 31, 2005.<sup>6</sup> The Commission approved the Customer Code and Industry Code (collectively, “new Codes”) on January 24, 2007,<sup>7</sup> and the new Codes became effective on April 16, 2007.<sup>8</sup>

NASD is proposing several technical, nonsubstantive amendments to the Mediation Code and the new Arbitration Codes. With these amendments, NASD is proposing to delete provisions that were rescinded prior to the Codes’ approval, to change a reference that was amended by a separate NASD proposal, and to add a provision that was approved by the Commission prior to its approval of the new Mediation and Arbitration Codes, but was inadvertently omitted from the new Codes.

First, NASD proposes to delete Interpretive Material (IM) 12000(f) and IM-13000(f) from the Arbitration Codes because these paragraphs were rescinded by SR-NASD-2005-070.<sup>9</sup> These paragraphs state that failure by a member or person associated with a member to waive the California Rules of Court, Division VI of the Appendix, entitled, “Ethics Standards

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<sup>5</sup> In 2004, NASD filed separately with the Commission the Industry and Mediation Codes. See Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (File No. SR-NASD-2004-011) (notice); and Securities Exchange Act Release No. 51855 (June 15, 2005), 70 FR 36440 (June 23, 2005) (File No. SR-NASD-2004-013) (notice).

<sup>6</sup> See Securities Exchange Act Release No. 52705 (October 31, 2005), 70 FR 67525 (November 7, 2005) (File No. SR-NASD-2004-013) (approval order).

<sup>7</sup> See Securities Exchange Act Release No. 55158 (Jan. 24, 2007), 72 FR 4574 (Jan. 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011) (approval orders).

<sup>8</sup> The changes were announced in Notice to Members 07-07 (Feb. 2007).

<sup>9</sup> See Securities Exchange Act Release No. 51825 (June 13, 2005), 70 FR 35482 (June 20, 2005) (File No. SR-NASD-2005-070) (approval order).

for Neutral Arbitrators in Contractual Arbitration” in certain circumstances may be deemed conduct inconsistent with just and equitable principle of trade, and a violation of Rule 2110. These provisions were included in IM-12000 and IM-13000 of the new Codes inadvertently, and should be removed.

Second, NASD proposes to amend the numerical reference in Rule 12102(a) of the Customer Code, Rule 13102(a) of the Industry Code and Rule 14102(a) of the Mediation Code, which identify the part of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) that applies to NASD Dispute Resolution. In a proposal filed on September 5, 2006 to reflect the complete separation of NASD from the Nasdaq Stock Market, NASD amended the number of the section of the Delegation Plan that applies to NASD Dispute Resolution.<sup>10</sup> As a result of this change, NASD is proposing to amend Rules 12102(a), 13102(a), and 14102(a) to change the reference to the Delegation Plan.

Finally, NASD proposes to insert a provision in the proposed amendments to Rules 12206(c) and 13206(c) of the Customer Code and Industry Code, respectively, stating that the six-year time limit on the submission of claims shall not apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. This provision was approved by the Commission prior to its approval of the new Arbitration Codes, but was inadvertently omitted from them.<sup>11</sup>

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<sup>10</sup> See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (File No. SR-NASD-2006-104) (approval order).

<sup>11</sup> See Securities Exchange Act Release No. 50714 (November 22, 2004), 69 FR 69971 (December 1, 2004) (File No. SR-NASD-2003-101) (approval order).

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>12</sup> which provides, among other things, that NASD'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 proposed rule change is consistent with the provision of the Act noted above because it will assist in the administration of arbitrations by clarifying the Customer, Industry, and Mediation Codes, which will make them easier to understand and apply.

### (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.

### (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 by NASD.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(3) thereunder because it is concerned solely with the administration of the self-regulatory organization.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it

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<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(3).

appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-026 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-026. 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 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 the File Number SR-NASD-2007-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).