

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51324; File No. SR-NASD-2004-042)

March 7, 2005

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Foreign Hearing Locations

I. Introduction

On March 9, 2004, National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“Dispute Resolution”), 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 NASD Rule 10315 to permit arbitrations to occur in a foreign hearing location, and (2) to amend IM—10104 to allow the Director of Arbitration to authorize a higher or additional honorarium for the use of a foreign hearing location. NASD amended the proposal on September 29, 2004,³ and November 23, 2004.⁴ Notice of the proposed rule change was published for comment in the Federal Register on February 3, 2005.⁵ The Commission did not receive any comment letters on the proposal. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change amends NASD Rule 10315 to permit arbitrations to occur in a foreign hearing location in order to accommodate parties who desire to conduct their arbitrations abroad. Under the proposal, the foreign hearing location process will be strictly voluntary.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Mignon McLemore, Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2004.

⁴ Form 19b-4 dated November 23, 2004.

According to NASD, once Dispute Resolution has determined that an arbitration can be handled using a foreign hearing location, Dispute Resolution will inform claimants about the availability and the additional costs of the appropriate foreign hearing location, as well as seek the agreement of the respondents if a claimant wishes to use a foreign hearing location. Under the proposal, parties will pay an additional surcharge for use of the foreign hearing location. Also, under the proposal, all foreign arbitrators selected by NASD to conduct arbitrations in foreign hearing locations must: (1) meet NASD background qualifications for arbitrators; (2) receive training on NASD arbitration rules and procedures; and (3) satisfy at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD. In addition, the proposed rule change amends IM—10104 to allow the Director to authorize a higher or additional honorarium for the use of a foreign hearing location to cover the additional daily cost for the foreign arbitrators' service in that location. Under the proposal, this surcharge will initially be apportioned equally among the parties, unless they agree otherwise, but the foreign arbitrators will retain the authority to apportion the surcharge as provided for in NASD Rules 10205 and 10332.

According to NASD, the NASD Dispute Resolution Business Development staff, with the cooperation of the administrative staff of the groups providing the foreign arbitrators, will administer all cases designated for hearing in a foreign location. Also, according to NASD, the first foreign hearing location for NASD arbitrations will be in London. NASD represented that Dispute Resolution has formed a relationship with the Chartered Institute of Arbitrators (“CIArb”), which is based in London and maintains a worldwide roster of neutrals. NASD believes that a partnership between CIArb and NASD will provide its international constituents

⁵ Securities Exchange Act Release No. 51082 (February 3, 2005), 70 FR 5713 (“Notice”).

with access to a local roster of experienced neutrals, as well as the convenience and cost efficiency of conducting hearing sessions within a reasonable distance from their place of business or residence.

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.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 that the proposed rule change should improve NASD's ability to conduct arbitrations because it will provide those parties residing in foreign locations with the option of holding their arbitration hearings closer to home, using local arbitrators, and saving the expense of traveling to the United States to resolve their disputes. At the same time, the Commission notes that the voluntary aspect of the proposed rule change will allow these parties to decide in each matter whether a foreign hearing location or U.S. hearing location is preferable for them.

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. 78q-3(b)(6).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2004-042) be, and it hereby is, approved.

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

Margaret H. McFarland
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).