

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55078; File No. SR-NASD-2006-136)

January 10, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Technical and Grammatical Corrections to Rule 10308

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 December 28, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 is proposing to amend paragraph (a)(5)(B) of Rule 10308 of the NASD Code of Arbitration Procedure to delete unnecessary cross references in the definition of “immediate

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17CFR 240.19b-4(f)(6).

⁵ NASD informed the Commission staff that a clerical error was made in its filing and the word “individual’s” in paragraph (a)(5)(B)(iii) of Rule 10308 should be lowercase. Telephone conversation between Jean Feeney, Vice President, NASD; and Michael Hershaft, Special Counsel, Commission (Jan. 9, 2006). Because this is a non-substantive change, this amendment to the proposed rule change will not toll the 60-day abrogation period.

family member,” and to correct a grammatical error.⁶ The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

10308. Selection of Arbitrators

(a) Definitions

(1) through (4) No change.

(5) "public arbitrator"

(A) No change.

(B) For [the] purposes of this Rule, the term "immediate family member"

means:

(i) [the] a person's parent, stepparent, child, or stepchild[, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(ii) a member of [the] a person's household [of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(iii) an individual to whom a person [who receives] provides financial support of more than 50 percent of the individual's annual income [from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)]; or

⁶ The Commission recently approved amendments to Rule 10308, effective Jan. 15, 2007. Securities Exchange Act Release No. 54607 (Oct. 16, 2006), 71 FR 62026 (Oct. 20, 2006) (file No. SR-NASD-2005-094).

(iv) a person who is claimed as a dependent for federal income tax purposes [by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)].

(6) through (7) No change.

(b) through (f) No change.

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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 believes that the cross-references to “a person engaged in the conduct or activities described in paragraph (a)(4)(A) through (D)” in the definition of immediate family member in paragraphs (a)(5)(B)(i)-(iv) of Rule 10308 are redundant when read in conjunction with other provisions of the rule. For example, Rule 10308(a)(5)(A)(vii) provides that a person may be a public arbitrator if he or she “is not the spouse or immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).” The definition of “immediate family member” in Rule 10308(a)(5)(B) states, in part, “For

the purpose of this Rule, the term "immediate family member" means ... (i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).” Thus, both the rule and the definition refer redundantly to “a person [who is] engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).”

Moreover, new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308 were recently added to provide that persons who are otherwise qualified may not serve as public arbitrators if they have certain family members who are employed by, or serve as officers or directors of, entities in a control relationship with a broker-dealer.⁷ In these instances, there is no need to refer to paragraphs (a)(4)(A) through (D) as those paragraphs are not at issue. Rather, what is important is the family relationship itself.

For these reasons, NASD proposes to amend the examples of family relationships in the definition of “immediate family member” in paragraphs (a)(5)(B)(i)-(iv) of Rule 10308 in a non-substantive way to retain the relationships themselves but omit the references to paragraphs (a)(4)(A) through (D) of the rule. As noted above, because this reference is in Rule 10308(a)(5)(A)(vii), arbitrators who have an immediate family member engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) of the rule will continue to be ineligible to serve as public arbitrators. Arbitrators, who do not have immediate family members engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) of the rule, still may be subject to new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308, which governs public arbitrators.

⁷ Id.

In deleting the references to paragraphs (a)(4)(A) through (D), discussed above, NASD has rearranged phrases to provide additional clarity. In so doing, NASD does not intend to make any change in the substance of the definitions or in how they are construed.

Finally, NASD proposes to correct a grammatical error in Rule 10308(a)(5)(B) by replacing the term “for the purpose of” with the more common phrase “for purposes of,” which is used in the remainder of the rule.⁸

NASD has filed this proposed rule change for immediate effectiveness so that these proposed non-substantive changes to the definition of “immediate family member” can become operational on January 15, 2007, the same time as the most recent changes to the definition of public arbitrator.⁹ NASD believes this proposal will help clarify Rule 10308, and make it easier to determine the proper classification of an arbitrator.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ 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. 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 making Rule 10308 easier to understand and apply.

⁸ See, e.g., Rule 10308(a)(1), (2), (6), and (7).

⁹ See infra note 7.

¹⁰ 15 U.S.C. 78o-3(b)(6).

(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.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder¹² because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As required under Rule 19b-4(f)(6)(iii),¹³ NASD provided the Commission with written notice of NASD's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

public interest,¹⁴ as such waiver is necessary so that the proposed rule changes will become effective with other amendments to Rule 10308 on January 15, 2007. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it 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. Please include File Number SR-NASD-2006-136 on the subject line.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-136. 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-2006-136 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).