

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56029; File No. SR-NASD-2007-038)

July 9, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Customer and the Industry Codes of Arbitration Procedure to Clarify NASD's Jurisdiction Concerning Members of Other Self-Regulatory Organizations

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 June 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 constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(i).

4 17 CFR 240.19b-4(f)(1).

NASD Dispute Resolution is proposing to amend NASD Rules 12100 and 13100 of the NASD Codes of Arbitration Procedure for Customer Disputes (“Customer Code”) and for Industry Disputes (“Industry Code”) (together, the “Codes”) to clarify that, for purposes of the Codes, the term “member” includes any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Codes and/or to be treated as members of NASD for purposes of the Codes. Below is the text of the proposed rule change. Proposed new language is underlined.

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Customer Code

12100. Definitions

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.

Paragraphs (a) through (n) unchanged.

(o) Member

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in NASD, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of NASD for purposes of the Code, whether or not the membership has been terminated or cancelled.

Remainder unchanged.

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Industry Code

13100. Definitions

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.

Paragraphs (a) through (n) unchanged.

(o) Member

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in NASD, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of NASD for purposes of the Code, whether or not the membership has been terminated or cancelled.

Remainder unchanged.

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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 is amending Rule 12100(o) of its Customer Code and Rule 13100(o) of its Industry Code to clarify that, for purposes of the Codes, the term "member" includes any broker

or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Codes and/or to be treated as members of NASD for purposes of the Codes. Such members would, like NASD members, be treated as members whether or not their membership has been terminated or cancelled.

The proposed rule change will codify current practice under which NASD has assumed, by agreement, the arbitration and mediation functions of several self-regulatory organizations that closed their dispute resolution forums.⁵

2. Statutory Basis

NASD 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 NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and

⁵ The Codes apply not only to NASD members and their associated persons, but also to members and associated persons of the Municipal Securities Rulemaking Board ("MSRB"), the Philadelphia Stock Exchange ("Phlx"), the American Stock Exchange ("Amex"), International Securities Exchange ("ISE"), and The Nasdaq Stock Market LLC ("Nasdaq"), pursuant to agreements under which members of those self-regulatory organizations for which the NASD administers the arbitration process will be treated as "members" of the NASD for purposes of the Codes. See Securities Exchange Act Release No. 39378 (Dec. 1, 1997), 62 FR 64417 (Dec. 5, 1997) (SR-MSRB-97-4) (MSRB approval order); Securities Exchange Act Release No. 40517 (Oct. 1, 1998), 63 FR 54177 (Oct. 8, 1998) (SR-Phlx-98-28) (Phlx approval order); Securities Exchange Act Release No. 40622 (Oct. 30, 1998), 63 FR 59819 (Nov. 5, 1998) (SR-Amex-98-32) (Amex approval order); Securities Exchange Act Release 45094 (Nov. 21, 2001), 66 FR 60230 (Dec. 3, 2001) (File No. SR-ISE-00-17) (ISE approval order); and Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10-131) (Nasdaq approval order). See also Securities Exchange Act Release No. 55818 (May 25, 2007), 72 FR 30898 (June 4, 2007) (SR-NYSE-2007-048) (the New York Stock Exchange LLC's proposed rule change to provide guidance regarding new and pending arbitrations in light of the consolidation of NYSE Regulation's arbitration department with that of NASD Dispute Resolution.).

⁶ 15 U.S.C. 78o-3(b)(6).

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 provisions of the Act noted above because it will make explicit NASD's jurisdiction with respect to members of other self-regulatory organizations that, with NASD consent, have required their members to arbitrate pursuant to the Codes and/or to be treated as members of NASD for purposes of the Codes. The proposed rule change also will clarify that one set of arbitration rules and administration procedures will apply to these other self-regulatory organizations.

(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)(i) of the Act and subparagraph (f)(1) of Rule 19b-4 thereunder, because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.⁷ At any time within 60 days of the filing of the 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

⁷ 17 CFR 240.19b-4(f)(1).

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-2007-038 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-2007-038. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-038 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).