

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49716; File No. SR-NASD-2003-164)

May 17, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Adjournment of an Arbitration Hearing Within Three Business Days of the First Scheduled Hearing Session

On November 4, 2003, the National Association of Securities Dealers, Inc. (“NASD” or “Association”) through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”), filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4² thereunder, a proposal to amend the rules relating to the adjournment of a scheduled arbitration hearing. On March 5, 2004, NASD filed Amendment No. 1 to the proposed rule change.³ On April 1, 2004, NASD filed Amendment No. 2 to the proposed rule change.⁴ Notice of the proposed rule change, as amended, was published for comment in the Federal Register on April 14, 2004.⁵ No comments were received on the proposed rule change. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter dated March 5, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

⁴ See letter dated April 1, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

⁵ See Securities Exchange Act Release No. 49545 (April 8, 2004), 69 FR 19887 (April 14, 2004).

The proposed rule change will amend NASD IM-10104, Rule 10306, and Rule 10319 of the Code to impose a fee of \$100 per arbitrator on parties and to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session.

The Commission believes the proposed rule change is consistent with 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 the proposed rule change will provide NASD Dispute Resolution with an effective means of addressing the problems associated with last minute adjournments. The rule change should discourage frivolous adjournment requests while promoting more efficient use of the arbitration process by encouraging parties, when appropriate, to settle their disputes earlier to avoid additional fees. In addition, the Commission believes the proposed rule change should help NASD Dispute Resolution maintain a deep pool of qualified arbitrators by assuring arbitrators of some compensation in the event a scheduled hearing is adjourned at the last minute. In sum, the Commission believes that, by providing a more efficient and effective forum for investors to address grievances involving NASD members, the proposed rule change will serve to protect investors and the public interest.

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

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2003-164) 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).