

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-49852; File No. SR-NASD-2004-039)**

**June 14, 2004**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Reducing the Time for Chairperson Selection**

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 March 4, 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 (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On May 13, 2004, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Dispute Resolution is proposing to amend NASD Rule 10308 of the NASD Code of Arbitration Procedure (“Code”) to reduce the time allotted the parties for chairperson selection. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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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> See letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 12, 2004.

**10308. Selection of Arbitrators**

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(c) Striking, Ranking, and Appointing Arbitrators on Lists

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(5) Selecting a Chairperson for the Panel

The parties shall have [15] 7 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties notify Dispute Resolution staff prior to the expiration of the original deadline that they need more time in which to reach agreement, Dispute Resolution staff will extend the time to select a chairperson for an additional 8 days. If the parties cannot agree within the allotted time, the Director shall appoint a chairperson from the panel as follows:

(Remainder of rule unchanged.)

\* \* \*

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

NASD Dispute Resolution proposes to reduce the time allotted for chairperson selection in Rule 10308(c)(5) of the Code from 15 days to 7 days after the Director of Arbitration sends notice of the arbitrators to the parties.

1. Purpose

Rule 10308 sets forth the procedures for how arbitrators and chairpersons are selected for an arbitration panel. First, the arbitrators are selected for the panel and then, from this list, the parties must select a chairperson within a 15-day timeframe. Currently, Rule 10308(c)(5) states, in relevant part, that “the parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to select a chairperson.” NASD proposes to reduce the chairperson selection period from 15 days to 7 days.<sup>4</sup> NASD believes the 15-day waiting period causes unnecessary delay in the selection process since Dispute Resolution staff estimates that parties fail to agree on a chairperson in nearly 80 percent of the cases. If the parties notify staff that they are negotiating to select a chairperson, but are unable to conclude the process within the allotted timeframe, staff will grant extensions to facilitate the negotiations.

NASD monitors continuously the claim filing process to determine how it can be improved and streamlined. In light of the failure of the parties to agree on a chairperson in nearly 80 percent of the cases and the delay caused by the 15-day waiting period, NASD believes that the claim filing process would become more efficient if the time required to select a chairperson were reduced. NASD believes that this proposal should provide sufficient time for the parties to reach agreement on a chairperson, if they wish to, and will allow the Initial

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<sup>4</sup> In cases where parties must respond to Dispute Resolution by mail, the computer system that tracks the parties’ responses adds two days to the response deadline to account for mailing time, and calculates the date their response is due. Parties then receive a letter specifying the date their response is due, based on system calculations.

Prehearing Conference to be scheduled more expeditiously. Further, the proposed rule change would expedite the processing of arbitrations by reducing the turnaround time for chairperson selection.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association'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 reducing the time it takes to select a chairperson will help streamline the arbitration process and ultimately make the process more efficient.

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, as amended.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be

disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended 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-2004-039 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-039. 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 Section, 450 Fifth

Street, NW, Washington, DC 20549. 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-2004-039 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>5</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12)