

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50036; File No. SR-NASD-2004-039)

July 19, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. to Reduce the Time for Chairperson Selection

I. Introduction

On March 4, 2004, the National Association of Securities Dealers, Inc. (“NASD”) 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 amending NASD Rule 10308 to reduce the time allotted the parties to an arbitration for chairperson selection.³ On May 13, 2004, NASD filed Amendment No. 1 to the proposed rule change.⁴ Notice of the proposed rule change, as amended, was published for comment in the Federal Register on June 18, 2004.⁵ No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change would reduce the time allotted the parties to arbitration for chairperson selection from fifteen days to seven days. Parties can have up to eight additional days provided they notify NASD prior to the expiration of the original deadline that they need more time in which to reach agreement.

III. Discussion

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ See letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 12, 2004.

For the following reasons, 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 believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act, 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.

In its filing, NASD states that under current NASD Rule 10308, under which parties are given fifteen days in which to select a chairperson, in a majority of cases the parties fail to agree on a chairperson. As a result, NASD contends that the current fifteen-day selection period unnecessarily delays the arbitration process.⁷ The Commission believes the NASD's goal of streamlining the arbitration process is appropriate and believes that the current proposal will help NASD achieve that goal while assuring parties of an adequate opportunity to participate in the selection of the chairperson. In particular, the proposal gives the parties seven days in which to select a chairperson while allowing the parties to apply for an additional eight days when they require more time to reach agreement. The Commission anticipates that in the great majority of cases the parties will either agree on a chairperson or agree to disagree and thereby permit NASD to select the chairperson within the time allotted under the proposed rule. As a result, the Commission believes the proposal should remove an unnecessary delay from the arbitration process while giving parties the flexibility to apply for additional time when they are negotiation in good faith to reach an agreement on a chairperson.

⁵ See Securities Exchange Act Release No. 49852 (June 14, 2004), 69 FR 34205.

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ Securities Exchange Act Release No. 49852 (June 14, 2004), 69 FR 34205, 34206 (June 18, 2004).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NASD-2004-039) be, and 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).