

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51526; File No. SR-NASD-2005-045)

April 12, 2005

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delivery of Customer Agreements Containing Predispute Arbitration Clauses

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 4, 2005, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 3110(f) to: (1) amend NASD Rule 3110(f)(2)(B) to conform to the SEC’s recordkeeping rules, in particular, Exchange Act Rule 17a-3(a)(17)(i)(B)(1),³ by extending the time period for delivery of a copy of a customer account agreement containing a predispute arbitration clause from the time of signing to within 30 days

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.17a-3(a)(17)(i)(B)(1). This rule requires a broker-dealer, among other things, to keep a record indicating that the broker-dealer has furnished to each customer within 30 days of opening the account a copy of the account record, or alternate document, containing the customer’s name, address, telephone number, date of birth, employment status, annual income, net worth, the account’s investment objectives, and other information.

of signing; (2) extend the compliance date of the recent amendments to NASD Rule 3110(f)(1)⁴ to June 1, 2005; and (3) make technical corrections to the numbering in NASD Rule 3110(f)(4), as recently amended, to conform to existing NASD rule format. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3110. Books and Records

(a) through (e) No change.

(f) (1) No change.

(2) (A) No Change.

(B) [At the time] Within thirty days of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(3) (A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to subparagraph (2)(B) of this Rule, the member must provide a copy to the customer by the earlier date required by this subparagraph (3)(A) or by

⁴ See Exchange Act Rel. No. 50713 (Nov. 22, 2004), 69 FR 70293 (Dec. 3, 2004) (Order Granting Approval to Proposed Rule Change as Amended and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 by the National Association of Securities Dealers, Inc., Regarding NASD Rule 3110(f) Governing Predispute Arbitration Agreements With Customers) (SR-NASD-98-74).

subparagraph (2)(B).

(B) No change.

(4) No predispute arbitration agreement shall include any condition that:

(A) [(i)] limits or contradicts the rules of any self-regulatory organization;

(B) [(ii)] limits the ability of a party to file any claim in arbitration;

(C) [(iii)] limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(D) [(iv)] limits the ability of arbitrators to make any award.

(5) through (7) No Change.

(g) through (h) 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 III 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

(a) Delivery of Customer Agreements

The purpose of the proposed rule change regarding the delivery of customer agreements is to conform the time period for the delivery of copies of any customer agreement containing a predispute arbitration clause to customers in NASD Rule 3110(f) with the SEC recordkeeping rules, in particular, Exchange Act Rule 17a-3(a)(17)(i)(B)(1).

On November 22, 2004, the Commission approved changes (the "Rule 3110 changes") to NASD Rule 3110(f), which governs the use of predispute arbitration agreements with customers. The primary purposes of the Rule 3110 changes were to require enhanced disclosure to customers about the arbitration process and to clarify the prohibition against inserting provisions in predispute arbitration agreements that limit rights or remedies that parties have (for example, the ability of a party to file any claim in arbitration). The Rule 3110 changes also require that firms provide a copy of any customer agreement containing a predispute arbitration clause to the customer, who must acknowledge receipt thereof on the agreement or on a separate document, at the time of signing.⁵ The proposed rule change would amend the time requirement for delivery of a copy of the customer agreement from the time of signing to within 30 days of signing.⁶ This

⁵ Prior to the Rule 3110 changes, firms were required to provide copies of predispute arbitration agreements to customers; however, the rule did not specify when they must do so.

⁶ The changes made to NASD Rule 3110(f)(3)(A) by the Rule 3110 changes require firms to provide customers who request a copy of any predispute arbitration clause or client agreement with a copy within ten business days of the request. Thus, if the rule changes proposed in this release are adopted, customers wishing to have a copy of the customer agreement sooner than the specified 30 days can request one. For example, if a customer requests a copy of the agreement on the date of signing, the firm must provide the copy to the customer within ten business days of receiving that request. In addition, firms may not extend the 30-day time period for compliance with the delivery requirement in NASD Rule 3110(f)(2)(B), even though the Rule 3110 changes allow a firm ten business days in which to provide a copy of the agreement to a customer upon request. For example, if a customer requested a copy of the customer agreement 25 days after signing, the firm still would be required to provide the customer with the copy within 30 days of the signing date (rather than within ten business days of the date the firm

change would conform the delivery requirement in NASD Rule 3110(f)(2)(B) to that in the SEC's recordkeeping rules.⁷

(b) Extension of Compliance Date

The Rule 3110 changes are scheduled to become effective on May 1, 2005.⁸ To give firms more time to amend their customer agreements to comply with the changes to NASD Rule 3110(f)(1), the proposed rule change will extend the compliance date by which firms must begin using the disclosure required by the changes to NASD Rule 3110(f)(1) from May 1, 2005 until June 1, 2005.⁹ This will give firms six months (rather than five) to implement the changes

received the request). Proposed language has been added to NASD Rule 3110(f)(3)(A) to address this situation.

⁷ See Exchange Act Rule 17a-3(a)(17)(i)(B)(1); Exchange Act Rel. No. 44992 (Oct. 26, 2001), 66 FR 55817 (Nov. 2, 2001). The Rule 3110 changes were first filed in 1998, prior to the adoption of the Rule 17a-3(a)(17)(i)(B)(1). See 69 FR at 70293.

⁸ The Notice announcing the Commission's approval of the Rule 3110 changes noted that "the proposed rule change would take effect 90 days after NASD publishes a Notice to Members within 60 days of publication of the Commission's approval" 63 FR at 70295. Notice to Members 05-09, which announced the approval, was published on January 31, 2005.

⁹ The effective date of the Rule 3110 changes was originally linked to the effective date of amendments to NASD Rule 10304, governing time limits on filing claims in arbitration, which will also take effect on May 1, 2005. See Exchange Act Rel. No. 50714 (Nov. 22, 2004), 69 FR 69971 (Dec. 1, 2004) (Order Granting Approval to Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and 2 Thereto Relating to Time Limits for Submission of Claims in Arbitration) (SR-NASD-2003-101). The two rule filings are related because both include provisions restricting the ability of member firms to bifurcate customer claims between court and arbitration, and because the enhanced disclosure in NASD Rule 3110(f)(1) states that some firms have time limits for the filing of claims in arbitration. Extension of the compliance date for NASD Rule 3110(f)(1) would not extend the effective date of the bifurcation provision in NASD Rule 3110(f)(5), which would remain the same (May 1, 2005) as the amendments to NASD Rule 10304, or the applicability of any provision in NASD Rule 10304.

required by the Rule 3110 changes with respect to NASD Rule 3110 (f)(1).¹⁰ However, the other requirements of the Rule 3110 changes (*i.e.*, subparagraphs (f)(2) through (f)(7)) as well as the amendments set forth in this proposed rule change will apply to all predispute arbitration agreements signed on or after May 1, 2005.

(c) Technical Amendments

The purpose of the proposed rule change renumbering the four subparagraphs in NASD Rule 3110(f)(4) is to conform the numbering in those subparagraphs to existing NASD rule format.

(d) Effective Dates and Compliance Dates

The proposed rule change will become effective upon approval by the Commission, and the compliance date of the proposed rule change will be May 1, 2005, except that firms will not be required to use the disclosure required by the changes to NASD Rule 3110(f)(1) until June 1, 2005. NASD will announce the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval.

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 NASD 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 the proposed rule change will continue to ensure that customers receive certain information regarding arbitration and predispute arbitration agreements in a timely fashion; however, the

¹⁰ Firms would be permitted to use customer agreements containing the new disclosure language required by the Rule 3110 changes before June 1, 2005.

proposed rule change will conform the delivery requirements of NASD Rule 3110(f) with the requirements in the SEC's recordkeeping rules.

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. 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-2005-045 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-2005-045. 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, 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 the File Number SR-NASD-2005-045 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A(b)(6) of the Act and the rules and regulations thereunder. Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed in part to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Commission believes

that the proposed rule change requiring members to provide customers with executed customer agreements in a time period consistent with the Commission's recordkeeping rules, in particular, Exchange Act Rule 17a-3(a)(17)(i)(B)(1), fosters cooperation and coordination with persons engaged in regulating transactions in securities. The Commission finds that the proposed rule change balances the need for protecting investors with the need for minimizing the administrative burden on members and is consistent with the requirements of the Act. The Commission notes that NASD Rule 3110(f)(3)(A) protects investors by requiring members to provide customers with a copy of the executed customer agreement within 30 days of execution, whether or not the customer requests a copy. If a customer requests a copy before the end of the 30-day period, the member must provide such copy within ten business days or before the end of the 30-day period, whichever date is earlier. The Commission notes that under the proposed rule change, members also are required to provide customers with additional copies of the executed agreement within ten business days if a customer requests it.

The Commission believes that the proposed rule change to extend the compliance date for NASD Rule 3110(f)(1) from May 1, 2005, to June 1, 2005 is designed to foster cooperation and coordination with persons engaged in regulating transactions in securities and is consistent with the Act. The Commission notes that the compliance date for NASD Rule 3110(f)(2) through (f)(7) remains May 1, 2005.

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission believes that granting accelerated approval for the proposed rule change will permit NASD to provide its members with notice of the revised customer

agreement delivery requirement and staggered compliance dates in timely manner. The Commission therefore finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit NASD members and the investing public.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2005-045) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).