

December 21, 2000

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

**Re: File No. SR-NASD-00-02 – Second Response to Comments and Extension  
of Time for Commission Action**

Dear Ms. England:

On December 18, 2000, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”) filed a Response to Comments and Amendment No. 3 to the above-referenced rule-filing. The rule filing was published for comment in the *Federal Register* on April 7, 2000.<sup>1</sup> NASD Dispute Resolution has since learned that the Commission received five additional comment letters regarding the rule filing in July, several months after the closing of the comment period on April 28, 2000, which were not forwarded to NASD Dispute Resolution.

NASD Dispute Resolution requested and received the five additional comment letters on December 20, 2000.<sup>2</sup> The five letters all oppose the proposed rule change, which, as described in detail in the December 18, 2000 letter, would eliminate the option of seeking temporary injunctive relief in arbitration. Parties would still be able to seek temporary injunctive relief in a court of competent jurisdiction, and the merits of the underlying case, including requests for permanent injunctive relief, would still be submitted to arbitration before a panel of three arbitrators on an expedited basis.

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<sup>1</sup> See Exchange Act Release No. 42606 (April 3, 2000) (File No. SR-NASD-00-02), 65 Federal Register 18405 (April 7, 2000).

<sup>2</sup> The additional letters are from the following commenters: Bob Chernow; Frank Louis Blair Koucky III; Michael A. Yoakum; Gilbert A. Armour; and a person identified only as “Kosta.”

The five additional commenters oppose the issuance of temporary injunctions against associated persons in raiding cases in any forum, because they believe that such orders often unduly restrict broker mobility, and may have unfair adverse consequences for customers of enjoined brokers. They oppose the elimination of the option of seeking temporary injunctive relief in arbitration because they believe that courts are more likely than arbitrators to grant injunctive relief against associated persons. Several commenters also question whether NASD Rule 11870, which requires member firms to cooperate in executing any customer-requested account transfer, adequately protects the interests of the investing public in raiding cases. They argue that either Rule 10335 or Rule 11870 should be amended to prohibit NASD member firms from seeking temporary injunctions in employment disputes when doing so would interfere with a customer's ability to transfer his or her account.

As noted in the December 18, 2000 letter, NASD Dispute Resolution does not believe that Rule 10335 is the appropriate vehicle for addressing these issues. Rule 10335 is a procedural, not substantive, rule. It governs where and how requests for temporary injunctive relief in intra-industry arbitrations may be made, and how injunctive relief orders obtained in court are integrated into the arbitration of the underlying merits of a dispute. The decision to eliminate the option of seeking temporary injunctive relief in arbitration is a recognition that, given the usual timeframes in the arbitrator selection process, courts are in a better position to offer immediate temporary injunctive relief, when such relief is appropriate, than is the NASD arbitration forum. Moreover, although Rule 10335 is primarily used in raiding cases, it is a purely procedural rule that applies to all eligible intra-industry disputes.

Contrary to the assumptions underlying the comment letters, Rule 10335 does not govern when temporary injunctive relief is appropriate, either in court or in arbitration. In fact, the same substantive legal standards for granting injunctive relief apply in both forums. Therefore, the elimination of the option of seeking temporary injunctive relief in arbitration could discriminate against associated persons and investors only if courts applied the applicable legal standards in a discriminatory manner. Since there is no evidence that courts do in fact discriminate against associated persons or investors, the elimination of the option of seeking temporary injunctive relief in arbitration should be viewed as a neutral procedural change.

In sum, the elimination of the option of seeking temporary injunctive relief in arbitration is a neutral, procedural change that has no effect on the substance of legal standards governing when such relief should be granted or denied. NASD Dispute Resolution continues to believe that the elimination of the option of seeking temporary injunctive relief in arbitration will benefit all parties to intra-industry arbitrations by simplifying the process for seeking such relief, and expediting the hearing on the merits of requests for permanent injunctive and other relief in arbitration.

NASD Dispute Resolution also hereby extends the time for Commission action on the above-referenced rule filing to February 5, 2001.

If you have any questions, please contact me at (202) 728-8275; e-mail [Laura.Gansler@nasd.com](mailto:Laura.Gansler@nasd.com). The fax number of NASD Dispute Resolution, Inc. is (202) 728-8833.

Very truly yours,

Laura Leedy Gansler  
Counsel  
NASD Dispute Resolution, Inc.