

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary
(202) 728-8062-Direct
(202) 728-8075-Fax

June 7, 2004

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **File No. SR-NASD-2004-087 – Technical Amendment to Section 4 of
Schedule A to the NASD By-Laws and to Rule 10308(d) of the NASD Code
of Arbitration Procedure; Filed for Immediate Effectiveness**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Philip Shaikun, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8451; e-mail: philip.shaikun@nasd.com; or Mignon McLemore, NASD Dispute Resolution, at (202) 728-8151; e-mail: mignon.mclemore@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264. The fax number of NASD Dispute Resolution is (202) 728-8833.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2004-087
Consists of 18 Pages
June 7, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to: (1) amend Section 4 of Schedule A to the NASD By-Laws to re-label a subparagraph that inadvertently was not correctly re-labeled as part of a recent rule filing, and (2) amend Rule 10308(d) of the NASD Code of Arbitration Procedure to provide a title for recently approved rule language and to replace and re-label rule language that inadvertently was omitted in a recent rule filing. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are bracketed.²

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Section 1 through 3 – No Change.

Section 4 – Fees

(a) through (l) No Change.

(m) There shall be a session fee of \$65.00 assessed as to each individual who is

¹ 15 U.S.C. 78s(b)(1).

² The language underlined in Rule 10308(d)(4) (Vacancies Created by Disqualification or Resignation) is not new language. The language previously was approved by the Commission, but inadvertently it was omitted in a recent rule filing as discussed below. The language is underlined to reflect its omission from the previous rule filing.

required to complete the Regulatory Element of the Continuing Education Requirements pursuant to the provisions of Rule 1120.

(n) No Change.

[(m)] (o) NASD shall assess each member a fee of \$10 per day, up to a maximum of \$300, for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed as required by NASD on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4, with such fee to be assessed starting on the day following the last date on which the event was required to be reported.

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10300. UNIFORM CODE OF ARBITRATION

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10308. Selection of Arbitrators

(a) through (c) No change.

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) – (2) No change.

(3) Standards for Deciding Challenges for Cause

The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

[(3)] (4) Vacancies Created by Disqualification or Resignation

Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change relating to Section 4 of Schedule A to the NASD By-Laws was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on September 25, 2002, which authorized the filing of the proposed rule change with the SEC. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on September 26, 2002. Further, counsel for The Nasdaq Stock Market, Inc. and NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”) were provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and

Delegation of Functions by NASD to its Subsidiaries. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt NASD Rules without recourse to the membership for approval.

The proposed rule change relating to Rule 10308(d) of the NASD Code of Arbitration Procedure was approved by the Board of Directors of NASD Dispute Resolution at its meeting on April 23, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Regulation were provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on April 24, 2003. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

As further discussed below, NASD is filing the proposed rule change for immediate effectiveness.

(b) Questions regarding this rule filing may be directed to Philip Shaikun, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8451, or Mignon McLemore, Counsel, NASD Dispute Resolution, at (202) 728-8151.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Technical Amendment to the NASD By-Laws

On December 22, 2003, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository. On January 29, 2004, NASD submitted Amendment No. 1 to the proposed rule change. The Commission published notice of the proposed rule change and Amendment No. 1 in the Federal Register on February 19, 2004.³ The proposed rule change added paragraph (m) to Section 4.

On March 19, 2004, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish an examination fee for the new Research Analyst Qualification Examination program.⁴ Among other changes, NASD re-labeled the existing paragraph (k) in Section 4 as paragraph (m), but it inadvertently did not correctly re-label the existing paragraph (m). As a result, Section 4 has two provisions identified as paragraph (m). NASD is filing this proposed rule change to re-label the paragraph (m) that was added pursuant to SR-NASD-2003-192 as paragraph (o).

Technical Amendment to the NASD Code of Arbitration Procedure

On June 12, 2003, NASD filed a notice of proposed rule change with the Commission to amend Rules 10308 and 10312 of the NASD Code of Arbitration Procedure (“Code”) to

³ See Securities Exchange Act Release No. 49224 (February 11, 2004), 69 FR 7833 (February 19, 2004) (notice of filing and immediate effectiveness of File No. SR-NASD-2003-192).

⁴ See Securities Exchange Act Release No. 49527 (April 2, 2004), 69 FR 19255 (April 12, 2004) (notice of filing and immediate effectiveness of File No. SR-NASD-2004-049).

modify arbitrator classification. The Commission published the notice in the Federal Register on August 21, 2003.⁵ After NASD submitted two responses to comments, the Commission approved the proposed rule change on April 16, 2004.⁶

The proposed rule change added, among other things, a provision to Rule 10308(d) of the Code concerning a party's request to disqualify an arbitrator. When this provision was inserted as new subparagraph (3) of the rule, the existing subparagraph (3) was inadvertently omitted. NASD is filing this proposed rule change to insert the omitted subparagraph, and to provide a title for the new subparagraph (to maintain uniformity within the rule). Thus, the title for the new language in subparagraph (3) will be "Standards for Deciding Challenges for Cause," and the omitted subparagraph will be re-labeled as subparagraph (4).

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of 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. NASD believes that this technical change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of Section 4 of Schedule A to the NASD By-Laws and Rule 10308(d) of the Code.

⁵ See Securities Exchange Act Release No. 48347 (August 14, 2003), 68 FR 50563 (August 21, 2003) (notice of filing of File No. SR-NASD-2003-95).

⁶ See Securities Exchange Act Release No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (approval order).

⁷ 15 U.S.C. 78o-3(b)(6).

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder,⁹ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of this filing. NASD requests that the Commission waive the five-day pre-filing notice requirement specified in Rule 19b-4(f)(6)(iii) under the

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

Act.¹⁰ In addition, NASD requests that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii),¹¹ so that the corrections can become effective immediately.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: June 7, 2004

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2004-087)

June , 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed
Rule Change by National Association of Securities Dealers, Inc. Relating to a Technical
Amendment to Section 4 of Schedule A to the NASD By-Laws and to Rule 10308(d) of
the NASD Code of Arbitration Procedure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and
Rule 19b-4 thereunder,² notice is hereby given that on , 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,
II, and III below, which Items have been prepared by NASD. NASD has designated the
proposed rule change as “non-controversial” under Rule 19b-4(f)(6) of the Act,³ which
renders the proposal effective upon receipt of this filing by the Commission. The
Commission is publishing this notice to solicit comments on the proposed rule change, as
amended, from interested persons.

I. SELF-REGULATORY ORGANIZATION’S STATEMENT OF THE TERMS
OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is filing with the Commission a proposed rule change to: (1) amend
Section 4 of Schedule A to the NASD By-Laws to re-label a subparagraph that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

inadvertently was not correctly re-labeled as part of a recent rule filing, and (2) amend Rule 10308(d) of the NASD Code of Arbitration Procedure to provide a title for recently approved rule language and to replace and re-label rule language that inadvertently was omitted in a recent rule filing. Below is the text of the proposed rule change. Proposed

new language is underlined; proposed deletions are bracketed.⁴

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Section 1 through 3 – No Change.

Section 4 – Fees

(a) through (l) No Change.

(m) There shall be a session fee of \$65.00 assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to the provisions of Rule 1120.

(n) No Change.

[(m)] (o) NASD shall assess each member a fee of \$10 per day, up to a maximum of \$300, for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed as required by NASD on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4, with such fee to be assessed starting on the day following the last date on which the event was required to be reported.

* * * * *

10300. UNIFORM CODE OF ARBITRATION

⁴ The language underlined in Rule 10308(d)(4) (Vacancies Created by Disqualification or Resignation) is not new language. The language previously was approved by the Commission, but inadvertently it was omitted in a recent rule filing as discussed below. The language is underlined to reflect its omission from the previous rule filing.

* * * * *

10308. Selection of Arbitrators

(a) through (c) No change.

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) – (2) No change.

(3) Standards for Deciding Challenges for Cause

The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

[(3)] (4) Vacancies Created by Disqualification or Resignation

Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information

about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).

* * * * *

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

(1) Purpose

Technical Amendment to the NASD By-Laws

On December 22, 2003, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository. On January 29, 2004, NASD submitted Amendment No. 1 to the proposed rule change. The Commission published notice of the proposed rule change and Amendment No. 1 in the Federal

Register on February 19, 2004.⁵ The proposed rule change added paragraph (m) to Section 4.

On March 19, 2004, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish an examination fee for the new Research Analyst Qualification Examination program.⁶ Among other changes, NASD re-labeled the existing paragraph (k) in Section 4 as paragraph (m), but it inadvertently did not correctly re-label the existing paragraph (m). As a result, Section 4 has two provisions identified as paragraph (m). NASD is filing this proposed rule change to re-label the paragraph (m) that was added pursuant to SR-NASD-2003-192 as paragraph (o).

Technical Amendment to the NASD Code of Arbitration Procedure

On June 12, 2003, NASD filed a notice of proposed rule change with the Commission to amend Rules 10308 and 10312 of the NASD Code of Arbitration Procedure (“Code”) to modify arbitrator classification. The Commission published the notice in the Federal Register on August 21, 2003.⁷ After NASD submitted two responses to comments, the Commission approved the proposed rule change on April 16, 2004.⁸

⁵ See Securities Exchange Act Release No. 49224 (February 11, 2004), 69 FR 7833 (February 19, 2004) (notice of filing and immediate effectiveness of File No. SR-NASD-2003-192).

⁶ See Securities Exchange Act Release No. 49527 (April 2, 2004), 69 FR 19255 (April 12, 2004) (notice of filing and immediate effectiveness of File No. SR-NASD-2004-049).

⁷ See Securities Exchange Act Release No. 48347 (August 14, 2003), 68 FR 50563 (August 21, 2003) (notice of filing of File No. SR-NASD-2003-95).

⁸ See Securities Exchange Act Release No. 49573 (April 16, 2004), 69 FR 21871

The proposed rule change added, among other things, a provision to Rule 10308(d) of the Code concerning a party's request to disqualify an arbitrator. When this provision was inserted as new subparagraph (3) of the rule, the existing subparagraph (3) was inadvertently omitted. NASD is filing this proposed rule change to insert the omitted subparagraph, and to provide a title for the new subparagraph (to maintain uniformity within the rule). Thus, the title for the new language in subparagraph (3) will be "Standards for Deciding Challenges for Cause," and the omitted subparagraph will be re-labeled as subparagraph (4).

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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. NASD believes that this technical change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of Section 4 of Schedule A to the NASD By-Laws and Rule 10308(d) of the Code.

(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

(April 22, 2004) (approval order).

⁹ 15 U.S.C. 78o-3(b)(6).

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change has been filed by NASD as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of this filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

Rule 19b-4(f)(6)(iii) under the Act¹⁴ requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. NASD has requested that the Commission waive the five-day pre-filing notice requirement. The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing requirement.

In addition, NASD has requested that the Commission waive the 30-day pre-

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

operative waiting period, which would make the proposed rule operative immediately. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case because the proposed rule change is solely technical in nature. For these reasons, the Commission waives the 30-day pre-operative period and designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-087. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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.

Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).