

May 1, 1998

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

Re: **SR-NASD-98-34**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed is the above-numbered rule filing. I also have enclosed a 3-1/2" disk containing the rule filing in Word to facilitate production of the Federal Register notice.

If you have any questions, please call Mary M. Dunbar, Office of the General Counsel, at 728-8252.

Very truly yours,

Alden S. Adkins
Senior Vice President and General Counsel

Attachment

File No. SR-NASD-98-34
Consists of 11 Pages

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), NASD Regulation, Inc. ("NASD Regulation") is filing a proposed rule change to Rule 9514. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

9514. Hearing and Decision

* * *

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party[, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members]. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; [One] one member shall be a Director of NASD Regulation, and the

remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on [the] a Hearing Panel.

* * *

2. Procedures of the Self-Regulatory Organization

The NASD Regulation Board of Directors approved the proposed rule change and authorized its filing at its November 14, 1997 meeting. The Nasdaq Stock Market has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on December 11, 1997. No other action by the 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.

NASD Regulation proposes to make the rule change effective upon approval by the Securities and Exchange Commission.

Questions regarding this rule filing may be directed to Mary M. Dunbar, Office of General Counsel, at 202-728-8252.

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

(a) Purpose

The purpose of the proposed rule change is to change the composition of the Hearing Panel for proceedings under the Rule 9510 Series in which NASD Regulation seeks to suspend or cancel the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Currently, Rule 9514(b) requires that the Hearing Panel for such proceedings be composed of two or more members, one of whom must be a Director of NASD Regulation, and the remaining member or members must be a current or former Director of NASD Regulation or Governor of the NASD.

NASD Regulation has determined that board-level panelists are not necessary for such hearings because the issues to be resolved are narrow and largely administrative.¹ NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing on these issues and render a decision. Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series.

(b) Statutory Basis

NASD Regulation 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. The NASD believes that the proposed rule change will result in a fair and efficient procedure for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation so that where appropriate, such members or persons are not permitted to continue to do business with investors.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

¹ Generally, the only issues to be addressed are whether: (1) the member or person paid the award in full or fully complied with the settlement agreement; (2) the claimant agreed to installment payments or has otherwise settled the matter; (3) the member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; or (4) the member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending, or the award or payment owed under the settlement agreement has discharged by the bankruptcy court. In addition, the Commission also has stated that a bona fide inability to pay an arbitration award is an important consideration determining whether any sanction for failure to pay an arbitration award is excessive or oppressive. See In the Matter of the Application of Bruce M. Zipper, Exchange Act Release 33376, Admin. Proc. File No. 3-7908. (Dec. 23, 1993).

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

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

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

NASD Regulation requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. The proposed rule change will result in a fair and efficient procedure for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. The proposed rule change does not alter the right to a hearing concerning a failure to pay an arbitration award; it only alters the composition of the Hearing Panel. The current Rule requiring current or former NASD Governors or NASD Regulation Directors to serve on such Hearing Panels is imposing a burden on the process that is not necessary and needs to be changed quickly so that such persons will not be called upon to resolve what is essentially a narrow dispute. Hearing Officers, with their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series, are well-suited to resolving such disputes. Therefore, NASD Regulation requests the Commission to accelerate the effectiveness of the proposed rule change to the 15th day after its publication in the Federal Register.

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 Regulation has caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: _____
Alden S. Adkins, Senior Vice President and General Counsel

May 1, 1998

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-98-34)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Regulation, Inc. Relating to Cancellations and Suspensions for Failure to Comply with Arbitration Award

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 30, 1998, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

The Association proposes to amend that portion of Rule 9514 of the Rules of the Association relating to review of non-compliance with arbitration awards and settlements. The Association proposes to change the composition of the hearing panels used in such proceedings. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

9514. Hearing and Decision

* * *

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party[, and the NASD

Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members]. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; [One] one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on [the] a Hearing Panel.

* * *

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 Regulation 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 Regulation 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

The purpose of the proposed rule change is to change the composition of the Hearing Panel for proceedings under the Rule 9510 Series in which NASD Regulation seeks to suspend or cancel the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Currently, Rule 9514(b) requires that the Hearing Panel for such proceedings be composed of two or more members, one of whom must be a Director of NASD Regulation, and the remaining member or members must be a current or former Director of NASD Regulation or Governor of the NASD.

NASD Regulation has determined that board-level panelists are not necessary for such hearings because the issues to be resolved are narrow and largely administrative.¹ NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing on these issues and render a decision. Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series.

2. Statutory Basis

NASD Regulation 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. The NASD believes that the proposed rule change will result in a fair and efficient procedure for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation so that where appropriate, such members or persons are not permitted to continue to do business with investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

¹ Generally, the only issues to be addressed are whether: (1) the member or person paid the award in full or fully complied with the settlement agreement; (2) the claimant agreed to installment payments or has otherwise settled the matter; (3) the member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; or (4) the member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending, or the award or payment owed under the settlement agreement has discharged by the bankruptcy court. In addition, the Commission also has stated that a bona fide inability to pay an arbitration award is an important consideration determining whether any sanction for failure to pay an arbitration award is excessive or oppressive. See In the Matter of the Application of Bruce M. Zipper, Exchange Act Release 33376, Admin. Proc. File No. 3-7908. (Dec. 23, 1993).

(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

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission 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 result in a fair and efficient procedure for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. The proposed rule change does not alter the right to a hearing concerning a failure to pay an arbitration award; it only alters the composition of the Hearing Panel. The current Rule requiring current or former NASD Governors or NASD Regulation Directors to serve on such Hearing Panels is imposing a burden on the process that is not necessary and needs to be changed quickly so that such persons will not be called upon to resolve what is essentially a narrow dispute. Hearing Officers, with their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series, are well-suited to resolving such disputes.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 Regulation. All submissions should refer to the file number in the caption above and should be submitted by [insert date 15 days from the date of publication].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary