

January 30, 1998

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Mail Stop 2-2/Room 2097

Re: **File No. SR-NASD-98-07, Amendment to Rule 10314 to Extend the Time to Answer Arbitration Complaints**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in WordPerfect 5.1 to facilitate production of the Federal Register release.

If you have any questions, please contact Jean I. Feeney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-6959; e-mail feeneyj@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

John M. Ramsay
Vice President and Deputy General Counsel

Attachment

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 the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), NASD Regulation, Inc. ("NASD Regulation") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Rule 10314 of the Code of Arbitration Procedure ("Code") of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to extend the time to answer an arbitration claim from 20 business days to 45 calendar days and to eliminate extensions of time to answer except in extraordinary circumstances. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Unchanged.

(b) Answer--Defenses, Counterclaims, and/or Cross-Claims

(1) Within [twenty (20) business] 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all available

defenses and relevant facts thereto that will be relied upon at the hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based upon any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) - (B) Unchanged.

(C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an [a]Answer within [twenty (20) business] 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing.

(3) - (4) Unchanged.

(5) The time period to file any pleading, whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party Pleading, may be extended for such further period as may be granted by the Director of Arbitration or with the consent of the initial claimant. Extensions of the time period to file an Answer are disfavored and will not be granted by the Director except in extraordinary circumstances.

(c) - (d) Unchanged.

* * *

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation at its meeting on November 14, 1997, which authorized the filing of the rule change with the SEC. The staff of The Nasdaq Stock Market, Inc. 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)(4) of Article VII of the By-Laws permits the NASD Board of Governors to amend the Code of Arbitration Procedure without recourse to the membership for approval.

The NASD proposes to make the proposed rule change operative on March 1, 1998.

(b) Questions regarding this rule filing may be directed to Jean I. Feeney, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-6959.

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

(a) Purpose

NASD Regulation is proposing to amend Rule 10314 of the Code to recognize and conform to current practice and to reduce the administrative burden on NASD Regulation staff. Currently, Rule 10314 requires respondents to answer an arbitration claim within twenty business days of receiving it. NASD Regulation's Office of Dispute Resolution ("Office") routinely grants requests for extension of the time to answer for two weeks.

Requests for extension generally arise because respondents need additional time to develop a complete answer to the claim. Complete answers are encouraged. In fact, under Rule 10314(b)(2)(A), a party who pleads only a general denial as an answer may, upon objection by a party, be barred by the arbitrators from presenting any facts or defenses at the hearing. In addition, under Rule 10314(b)(2)(B), a party who fails to specify all available defenses and relevant facts in the answer may, upon objection by a party, be barred by the arbitrators from presenting such facts or defenses at the hearing.

The practice of granting extensions of time to answer, however, burdens the staff with processing requests and responses, and it undermines the certainty of the deadlines specified in the Rule. The NASD believes the Code should reflect the current reality that most claims are not answered within the 20 business day period that currently is specified.

Accordingly, the NASD has determined that Rule 10314 of the Code should be amended to extend the time to answer a claim to 45 calendar days and to eliminate routine extensions.¹ Under the proposed amendment, extensions are disfavored and will be granted only in extraordinary circumstances or with the consent of the initial claimant. The term “extraordinary circumstances” is not defined; however, the NASD intends that the circumstances that would qualify for an extension would be limited to unusual and unforeseeable personal or professional conflicts that would make filing on time extremely difficult or burdensome. Extending the time period to 45 calendar days provides approximately the same amount of time to answer as is currently the case, since 20 business

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The proposed rule change will not apply to simplified arbitration claims filed under Rule 10302 of the Code. Answers to claims involving less than \$10,000 will continue to be due within 20 days of receipt of the Statement of Claim.

days equal 28 calendar days, and a two-week routine extension (14 calendar days) would bring the total to 42 calendar days.

The Securities Industry Conference on Arbitration (SICA)² considered the proposed rule change at its October 16, 1997 meeting, but declined to adopt it as part of the Uniform Code of Arbitration. The other self-regulatory organization (SRO) members of SICA noted that, because of the small number of claims they process, they do not experience significant burdens related to administering extensions of time to answer. SICA members also believe that the proposed change would not reduce the number of extension requests and that it may result in additional delays. Notwithstanding their reluctance to adopt the proposed change, the members of SICA understood NASD Regulation's position that the proposed amendment will eliminate the administrative costs associated with granting extensions in the time to answer claims. Accordingly, SICA recommended that NASD Regulation adopt the change on a pilot basis. The NASD has determined to adopt the rule without a sunset provision, but the NASD will monitor the impact of the proposed rule change.

(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

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SICA is a group composed of representatives of the self-regulatory organizations that provide dispute resolution forums, public investors, and the securities industry. Staff of the SEC attend as non-voting invitees. SICA was established with the encouragement of the SEC to develop uniform rules for securities arbitration (the Uniform Code of Arbitration) and to provide a forum for the various dispute resolution forums and users of those forums to communicate about issues relating to securities industry dispute resolution. SICA member forums are encouraged to adopt the provisions of the SICA Uniform Code of Arbitration, but are not required to do so.

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 protects the public interest by making the time period within which to answer uniform for all parties, whether or not they are knowledgeable enough to seek an extension of time, and by eliminating further extensions of time, absent extraordinary circumstances, in order to make the arbitration process move more expeditiously.

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

NASD Regulation 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 Act and paragraph (e)(6) of Rule 19b-4 thereunder, 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 after filing. In accordance with Rule 19b-4, the NASD submitted written notice of its intent to file the

proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. The NASD proposes to make the proposed rule change operative on March 1, 1998.

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

NASD REGULATION, INC.

BY: _____

John M. Ramsay,
Vice President and Deputy General Counsel

January 30, 1998

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-98-07)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Extensions of Time to Answer Arbitration Complaints

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 , NASD Regulation, Inc. ("NASD Regulation") 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 Regulation. NASD Regulation has designated this proposal as one constituting a proposed rule change that 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 after filing, under Section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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

NASD Regulation is proposing to amend Rule 10314 of the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to recognize and conform to current practice and to reduce the administrative burden on NASD Regulation staff. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * *

10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Unchanged.

(b) Answer--Defenses, Counterclaims, and/or Cross-Claims

(1) Within [twenty (20) business] 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based upon any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) - (B) Unchanged.

(C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an [a]Answer within [twenty (20) business] 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below,

may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing.

(3) - (4) Unchanged.

(5) The time period to file any pleading, whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party Pleading, may be extended for such further period as may be granted by the Director of Arbitration or with the consent of the initial claimant. Extensions of the time period to file an Answer are disfavored and will not be granted by the Director except in extraordinary circumstances.

(c) - (d) Unchanged.

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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 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

(a) Purpose

NASD Regulation is proposing to amend Rule 10314 of the Code to recognize and conform to current practice and to reduce the administrative burden on NASD Regulation staff. Currently, Rule 10314 requires respondents to answer an arbitration claim within twenty business days of receiving it. NASD Regulation's Office of Dispute Resolution ("Office") routinely grants requests for extension of the time to answer for two weeks. Requests for extension generally arise because respondents need additional time to develop a complete answer to the claim. Complete answers are encouraged. In fact, under Rule 10314(b)(2)(A), a party who pleads only a general denial as an answer may, upon objection by a party, be barred by the arbitrators from presenting any facts or defenses at the hearing. In addition, under Rule 10314(b)(2)(B), a party who fails to specify all available defenses and relevant facts in the answer may, upon objection by a party, be barred by the arbitrators from presenting such facts or defenses at the hearing.

The practice of granting extensions of time to answer, however, burdens the staff with processing requests and responses, and it undermines the certainty of the deadlines specified in the Rule. The NASD believes the Code should reflect the current reality that most claims are not answered within the 20 business day period that currently is specified.

Accordingly, the NASD has determined that Rule 10314 of the Code should be amended to extend the time to answer a claim to 45 calendar days and to eliminate routine

extensions.¹ Under the proposed amendment, extensions are disfavored and will be granted only in extraordinary circumstances or with the consent of the initial claimant. The term “extraordinary circumstances” is not defined; however, the NASD intends that the circumstances that would qualify for an extension would be limited to unusual and unforeseeable personal or professional conflicts that would make filing on time extremely difficult or burdensome. Extending the time period to 45 calendar days provides approximately the same amount of time to answer as is currently the case, since 20 business days equal 28 calendar days, and a two-week routine extension (14 calendar days) would bring the total to 42 calendar days.

The Securities Industry Conference on Arbitration (SICA)² considered the proposed rule change at its October 16, 1997 meeting, but declined to adopt it as part of the Uniform Code of Arbitration. The other self-regulatory organization (SRO) members of SICA noted that, because of the small number of claims they process, they do not experience significant burdens related to administering extensions of time to answer. SICA members also believe that the proposed change would not reduce the number of extension requests and that it may result in additional delays. Notwithstanding their reluctance to adopt the proposed change, the members of SICA understood NASD Regulation’s position that the proposed amendment

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² SICA is a group composed of representatives of the self-regulatory organizations that provide dispute resolution forums, public investors, and the securities industry. Staff of the SEC attend as non-voting invitees. SICA was established with the encouragement of the SEC to develop uniform rules for securities arbitration (the Uniform Code of Arbitration) and to provide a forum for the various dispute resolution forums and users of those forums to communicate about issues relating to securities industry dispute resolution. SICA member forums are encouraged to adopt the provisions of the SICA Uniform Code of Arbitration, but are not required to do so.

will eliminate the administrative costs associated with granting extensions in the time to answer claims. Accordingly, SICA recommended that NASD Regulation adopt the change on a pilot basis. The NASD has determined to adopt the rule without a sunset provision, but the NASD will monitor the impact of the proposed rule change.

(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 protects the public interest by making the time period within which to answer uniform for all parties, whether or not they are knowledgeable enough to seek an extension of time, and by eliminating further extensions of time, absent extraordinary circumstances, in order to make the arbitration process move more expeditiously.

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

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (e)(6) of Rule 19b-4 thereunder, 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 after filing. In accordance with Rule 19b-4, the NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. The NASD proposes to make the proposed rule change operative on March 1, 1998.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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. 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 the 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].

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