

January 23, 2004

Catherine McGuire
Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **SR-NASD-2004-013 - Reorganization and Revision of NASD Mediation Rules**

Dear Ms. Harmon:

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 Laura Gansler, Counsel, NASD Dispute Resolution, Inc., at (202) 728-8275; e-mail laura.gansler@nad.com. The fax number is (202) 728-8833.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

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”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to reorganize its mediation rules. The proposed rule change is part of a comprehensive plan to reorganize NASD’s Code of Arbitration Procedure (“Code”) into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”); the NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”); and the NASD Code of Mediation Procedure (“Mediation Code”). NASD is also proposing to simplify the language and organization of all three Codes.

This rule filing contains the proposed Mediation Code, a copy of which is attached as Exhibit 2.¹ A chart comparing the current mediation rules and the proposed Mediation Code is attached as Exhibit 3. An old-to-new conversion guide is attached as Exhibit 4.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Dispute Resolution at its meeting on November 12, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Regulation have 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

¹The proposed Customer Code was filed with the Commission on October 15, 2003 (SR-NASD-2003-158). The proposed Industry Code was filed on January 16, 2004 (SR-NASD-2004-011).

Governors had an opportunity to review the proposed rule change at its meeting on November 13, 2003. 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.

(b) Questions regarding this rule filing may be directed to Laura Gansler, Counsel, NASD Dispute Resolution, at (202) 728-8275.

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

(a) Purpose

This rule filing is part of a comprehensive plan to reorganize and simplify the NASD Code of Arbitration Procedure. Specifically, NASD is proposing to reorganize its dispute resolution rules in a more logical, user-friendly way, including creating separate Codes for customer and industry arbitrations, and for mediations. At the same time, it is proposing to rewrite the three Codes using plain English, in accordance with the Commission's plain English guidelines. Although NASD is also proposing to implement several substantive rule changes to its arbitration rules, as described in the Customer and Industry Code rule filings, NASD is not proposing any substantive changes to the current rules governing mediations.

Reorganization

One of the most frequent criticisms of the current Code is that it is poorly organized. Parties, particularly infrequent users of the forum, have difficulty finding the rules they are looking for, because the rules are not presented in a logical order. The confusion is compounded by the fact that certain rules in the Code apply only to customer cases, some apply only to industry cases, and still others apply to both types of disputes. In addition, the current Code

contains the NASD mediation rules, despite the fact that many matters are submitted directly to mediation, and do not arise out of an arbitration proceeding.

To address these concerns, NASD is proposing to divide the current Code into three separate Codes: the Customer Code, the Industry Code, and the Mediation Code. NASD believes that maintaining separate Codes will make it easier for parties to find the rules that apply to their disputes, particularly for parties to disputes that are submitted directly to mediation. NASD will maintain electronic versions of each code on its Web site, www.nasd.com, and will make paper copies available upon request.

In keeping with the current NASD rule numbering system, each of the three codes will be numbered in the thousands, and major sections will be numbered in the hundreds. Individual rules within those sections will be numbered in the tens (or ones, if necessary). The current method for numbering and lettering paragraphs within individual rules will remain unchanged. The Customer Code will use the Rule 12000 series, the Industry Code will use the Rule 13000 series, and the Mediation Code will use the Rule 14000 series, all of which are also currently unused. NASD will reserve the Rule 10000 series, which is currently used for NASD's dispute resolution rules, for future use.

Plain English

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations ("SROs") to use "plain English" in disclosure documents and other materials used by investors. At that time, the SEC published a "Plain English Handbook," to provide guidance to issuers and SROs in drafting such materials. The Plain English Handbook recommended using shorter, more common words; breaking long rules into shorter ones; using the active voice whenever possible; and using easy-to-read formatting, such as bullet points. NASD has

implemented these guidelines wherever possible in revising the proposed Mediation Code, as well as the proposed Customer and Industry Codes.

Proposed Definitions Rule

NASD is also proposing to add a comprehensive definitions rule to the Mediation Code (proposed Rule 14100). This rule would include definitions of terms used throughout the proposed Mediation Code. NASD believes that this rule will provide useful clarification for parties and mediators.

No Substantive Changes

The proposed rule change would establish a separate Mediation Code, and would shorten and simplify NASD's current mediation rules in a manner consistent with the proposed Customer and Industry Codes. However, with the exception of adding a definitions rule, as described above, NASD is not proposing any substantive changes to its current rules governing mediations.

(b) 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'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. NASD believes that the proposed rule change will protect the public interest by making its mediation rules easier to find, and by making the mediation process more accessible to parties.

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

NASD 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)

Not applicable.

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.
2. Text of Proposed NASD Code of Mediation Procedure
3. Chart Comparing Current NASD Mediation Rules and Proposed NASD Code of Mediation Procedure
4. Old-to-New Conversion Guide

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD

Dispute Resolution 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: January 23, 2004

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2004-013)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend NASD Mediation Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on _____, the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”) 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 Dispute Resolution. 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 is proposing to amend the NASD Code of Arbitration Procedure (“Code”) to reorganize the current rules, simplify the language, codify current practices, and implement several substantive changes. NASD is proposing to reorganize its current dispute resolution rules (Rules 10000 et. seq.) into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”); the NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”); and the NASD Code of Mediation Procedure (“Mediation Code”). The three new codes will replace the current NASD Code in its entirety.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

This rule filing contains the proposed Mediation Code, a copy of which is attached as Exhibit 2.⁴ A chart comparing the current mediation rules and the proposed Mediation Code is attached as Exhibit 3. An old-to-new conversion guide is attached as Exhibit 4.

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 has 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

(a) Purpose

This rule filing is part of a comprehensive plan to reorganize and simplify the NASD Code of Arbitration Procedure. Specifically, NASD is proposing to reorganize its dispute resolution rules in a more logical, user-friendly way, including creating separate Codes for customer and industry arbitrations, and for mediations. At the same time, it is proposing to rewrite the three Codes using plain English, in accordance with the Commission's plain English guidelines. Although NASD is also proposing to implement several substantive rule changes to its arbitration rules, as described in the Customer and Industry Code rule filings, NASD is not proposing any substantive changes to the current rules governing mediations.

⁴The proposed Customer Code was filed with the Commission on October 15, 2003 (SR-NASD-2003-158). The proposed Industry Code was filed on January 16, 2004 (SR-NASD-2004-011).

Reorganization

One of the most frequent criticisms of the current Code is that it is poorly organized. Parties, particularly infrequent users of the forum, have difficulty finding the rules they are looking for, because the rules are not presented in a logical order. The confusion is compounded by the fact that certain rules in the Code apply only to customer cases, some apply only to industry cases, and still others apply to both types of disputes. In addition, the current Code contains the NASD mediation rules, despite the fact that many matters are submitted directly to mediation, and do not arise out of an arbitration proceeding.

To address these concerns, NASD is proposing to divide the current Code into three separate Codes: the Customer Code, the Industry Code, and the Mediation Code. NASD believes that maintaining separate Codes will make it easier for parties to find the rules that apply to their disputes, particularly for parties to disputes that are submitted directly to mediation. NASD will maintain electronic versions of each code on its Web site, www.nasd.com, and will make paper copies available upon request.

In keeping with the current NASD rule numbering system, each of the three codes will be numbered in the thousands, and major sections will be numbered in the hundreds. Individual rules within those sections will be numbered in the tens (or ones, if necessary). The current method for numbering and lettering paragraphs within individual rules will remain unchanged. The Customer Code will use the Rule 12000 series, the Industry Code will use the Rule 13000 series, and the Mediation Code will use the Rule 14000 series, all of which are also currently unused. NASD will reserve the Rule 10000 series, which is currently used for NASD's dispute resolution rules, for future use.

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NASD is also proposing to add a comprehensive definitions rule to the Mediation Code (proposed Rule 14100). This rule would include definitions of terms used throughout the proposed Mediation Code. NASD believes that this rule will provide useful clarification for parties and mediators.

No Substantive Changes

The proposed rule change would establish a separate Mediation Code, and would shorten and simplify NASD’s current mediation rules in a manner consistent with the proposed Customer and Industry Codes. However, with the exception of adding a definitions rule, as described above, NASD is not proposing any substantive changes to its current rules governing mediations.

(b) 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’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. NASD believes that the proposed rule change will protect the public interest by making its mediation rules easier to find, and by making the mediation process more accessible to parties.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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].

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

Jonathan G. Katz
Secretary