

March 3, 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- 2004-039 – Reducing the Time for Chairperson Selection

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 Mignon McLemore, NASD Dispute Resolution, at (202) 728-8151; e-mail Mignon.McLemore@nasd.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”), National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“Dispute Resolution”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 10308 of the NASD Code of Arbitration Procedure (“Code”) to reduce the time allotted the parties for chairperson selection. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

10308. Selection of Arbitrators

* * *

(c) Striking, Ranking, and Appointing Arbitrators on Lists

* * *

(5) Selecting a Chairperson for the Panel

The parties shall have [15] five days from the date the Director sends notice of the names of the arbitrators to select a chairperson.

(Remainder of rule unchanged.)

* * *

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

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval. The effective date will be no later than 30 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to 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

NASD Dispute Resolution proposes to reduce the time allotted for chairperson selection in Rule 10308(c)(5) of the Code from 15 days to five days after the Director of Arbitration sends notice of the arbitrators to the parties.

(a) Purpose

Rule 10308 sets forth the procedures for how arbitrators and chairpersons are selected for an arbitration panel. First, the arbitrators are selected for the panel and then, from this list, the parties must appoint a chairperson within a 15-day timeframe. Currently, Rule 10308(c)(5) states, in relevant part, that “the parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to select a chairperson.” NASD proposes to reduce the chairperson selection period from 15 days to five days. The 15-day waiting period causes unnecessary delay in the selection process since Dispute Resolution staff estimates that parties fail to agree on a chairperson in nearly 80 percent of the cases.¹ If the parties notify staff that they are negotiating to select a chairperson, but are unable to conclude the process within the allotted timeframe, staff will grant extensions to facilitate the negotiations.

NASD monitors continuously the claim filing process to determine how it can be improved and streamlined. In light of the failure of the parties to agree on a chairperson in nearly 80 percent of the cases and the added delay caused by the 15-day waiting period, NASD believes that the claim filing process would become more efficient if the time required to complete an arbitration panel were reduced. NASD believes that this proposal should provide sufficient time for the parties to reach agreement on a chairperson, if they wish to, and will allow the Initial Prehearing Conference to be scheduled more expeditiously. Further, the proposed rule change would expedite the processing of arbitrations by reducing the turnaround time for chairperson selection.

¹ When parties must respond to Dispute Resolution by mail, two days normally are added to the response deadline to account for mailing time. Parties will receive a letter that will specify the date their response is due.

(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 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. NASD believes that reducing the time it takes to select a chairperson will help streamline the arbitration process and ultimately make the process more efficient.

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.

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: March 3, 2004

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2004-039)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Reducing the Time for Chairperson Selection

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 _____, National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“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 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 Dispute Resolution is proposing to amend NASD Rule 10308 of the NASD Code of Arbitration Procedure (“Code”) to reduce the time allotted the parties for chairperson selection. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

10308. Selection of Arbitrators

* * *

(c) Striking, Ranking, and Appointing Arbitrators on Lists

* * *

(5) Selecting a Chairperson for the Panel

The parties shall have [15] five days from the date the Director sends notice of the names of the arbitrators to select a chairperson.

(Remainder of rule unchanged.)

* * *

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

(a) Purpose

Rule 10308 sets forth the procedures for how arbitrators and chairpersons are selected for an arbitration panel. First, the arbitrators are selected for the panel and then, from this list, the parties must appoint a chairperson within a 15-day timeframe. Currently, Rule 10308(c)(5) states, in relevant part, that “the parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to select a chairperson.” NASD

proposes to reduce the chairperson selection period from 15 days to five days. The 15-day waiting period causes unnecessary delay in the selection process since Dispute Resolution staff estimates that parties fail to agree on a chairperson in nearly 80 percent of the cases.³ If the parties notify staff that they are negotiating to select a chairperson, but are unable to conclude the process within the allotted timeframe, staff will grant extensions to facilitate the negotiations.

NASD monitors continuously the claim filing process to determine how it can be improved and streamlined. In light of the failure of the parties to agree on a chairperson in nearly 80 percent of the cases and the added delay caused by the 15-day waiting period, NASD believes that the claim filing process would become more efficient if the time required to complete an arbitration panel were reduced. NASD believes that this proposal should provide sufficient time for the parties to reach agreement on a chairperson, if they wish to, and will allow the Initial Prehearing Conference to be scheduled more expeditiously. Further, the proposed rule change would expedite the processing of arbitrations by reducing the turnaround time for chairperson selection.

(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 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.

³ When parties must respond to Dispute Resolution by mail, two days normally are added to the response deadline to account for mailing time. Parties will receive a letter that will specify the date their response is due.

NASD believes that reducing the time it takes to select a chairperson will help streamline the arbitration process and ultimately make the process more efficient.

(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