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February 24, 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-2004-016 – Amendment No. 1 to the Online Arbitration Claim Filing Pilot Program

Dear Ms. England:

Pursuant to conversations with Division of Market Regulation staff, NASD is filing this letter as Amendment No. 1 to the proposed Online Arbitration Claim Filing Pilot Program. NASD is enclosing copies of the amended exhibit and a 3-1/2" disk containing the amended exhibit in Microsoft Word 7.0 to facilitate production of the Federal Register release.

Amendment No. 1 updates the timing of public access to the Pilot Program. NASD will allow anyone to access the system on a voluntary basis, so that the software developers can evaluate the technology's effectiveness and design. NASD also will accept arbitration claims submitted electronically through the Pilot Program.

The following changes were made to the last paragraph of the Conclusion on page 9, and to the last paragraph of the Conclusion on page 19 of the Exhibit (new language is underlined; deletions are bracketed):

NASD Dispute Resolution anticipates that it will take time for Claimants to become comfortable with the new procedures. Thus, NASD has decided to allow Claimants and counsel [who frequently represent Claimants in analyst cases] to access the system on a voluntary "Beta test" basis while final [preparations for general public use of the system] enhancements are being completed. [Once the Commission approves the proposed rule change, other Claimants' counsel will be able to test the system during the 30 days between announcement of the Commission's approval of the proposed rule change and its effective date.] Once the proposed rule change is effective, all analyst claims in which Claimants are represented by counsel must be submitted using the Claim Information Form. Moreover, any other claims may be submitted using the online claim

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notification procedure on a voluntary basis. The proposed rule change will be implemented on a pilot basis, and will remain in effect for two years from its effective date, unless NASD requests an extension.

If you have any questions, I can be reached at (202) 728-8151 or by email at Mignon.McLemore@NASD.com.

Very truly yours,

Mignon McLemore

Enclosures

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2004-016)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Implementation of a Web-based Arbitration Claim Notification Procedure on a Pilot Basis

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”), 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 Rule 10314(a) of the NASD Code of Arbitration Procedure to provide that, in certain circumstances, parties must complete part of the arbitration claim filing process through the Internet and that, in all circumstances, parties may complete part of the claim filing through the Internet. 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.

10314. Initiation of Proceedings

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

(a) Statement of Claim

(1) The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(2) In any case alleging that a customer, member, or associated person suffered a loss due to reliance on a recommendation from an analyst, the Claimant, if represented by counsel, shall complete a Claim Information Form that can be accessed through the NASD Web site at www.nasd.com. Upon completion, an NASD Dispute Resolution Tracking Form will be generated and displayed for the Claimant to reproduce as necessary. Claimant shall then file with the Director of Arbitration the required materials as provided in subparagraph (1), above, along with a hard copy of the NASD Dispute Resolution Tracking Form.

(3) Any other Claimant, irrespective of whether the Claimant is represented by counsel, may use the online claim notification procedure set forth in subparagraph (2), above.

(4) Subparagraphs (2) and (3) shall remain in effect until <two years from effective date>.

(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

NASD Dispute Resolution proposes to amend NASD Rule 10314(a) to provide that, in certain circumstances, parties must complete part of the arbitration claim filing process through the Internet and that, in all circumstances, parties may complete part of the claim filing process through the Internet.

Background

Based on information received from a variety of sources, NASD is anticipating an influx of arbitration cases arising out of the Global Settlement of Conflicts of Interest Between Research Analysts and Investment Banking (“Global Settlement”), which was approved by the United States District Court for the Southern District of New York on October 21, 2003.³

³ For more information on the Global Settlement, see http://www.nasd.com/global_settlement.asp.

NASD Dispute Resolution has developed a comprehensive plan to address the challenges posed by this anticipated increase in cases. One key aspect of the plan involves accelerating the planned development of an online, Web-based arbitration claim filing system. NASD Dispute Resolution is upgrading its computer technology platform, in what is known as the MATRICS⁴ Computer Project, which will replace its two legacy case management systems: CRAFTIS⁵ and NLSS.⁶ Before the upgrade is complete, the MATRICS Computer Project will be implemented in a series of overlapping releases between the second quarter of 2003 and the fourth quarter of 2005. The online claim filing release was originally planned for deployment in 2005, but in order to deal with the anticipated increase in analyst-related cases described above, NASD accelerated part of this release, an online claim notification procedure, to the fourth quarter of 2003.

Current Procedures for Filing and Processing an Arbitration Claim

Currently, if a party wants to file an arbitration claim, a package of materials is sent to the party to complete.⁷ The materials contain a Claim Information Sheet (attached as Exhibit 2) that NASD Dispute Resolution asks the party to complete on a voluntary basis. The Claim Information Sheet gathers key data about the claim and the parties and serves as a reliable source of background information for intake staff.⁸ Once the party has completed the materials, the

⁴ MATRICS stands for Mediation and Arbitration Tracking Retrieval Interactive Case System.

⁵ CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration function. It uses an old technology platform and is not Web-based.

⁶ NLSS stands for the Neutral List Selection System, which is the computer program NASD uses to appoint arbitrators on a rotational basis.

⁷ Parties may also download this information from NASD Dispute Resolution's Web site.

⁸ NASD Dispute Resolution estimates that the sheet is submitted in approximately 75% of the arbitration cases filed.

party then completes the claim filing process by submitting the Statement of Claim, executed Uniform Submission Agreement, and filing fee and hearing session deposit through the mail.⁹

When the intake staff in New York receives the Claimant's materials, they enter this new claim information into NASD's CRAFTIS computer system. This process requires manual entry of data by at least two staff members in different offices. For example, when a new claim is received, a staff member in New York opens a case file by reviewing either the Statement of Claim or the Claim Information Sheet, if it is submitted, and by inputting the claim information in a new CRAFTIS file. Once this process is complete, the case is assigned to the appropriate NASD Dispute Resolution regional office, where another staff member performs an analysis of the claim documents and then manually enters more data (i.e., party information, type of dispute, fees, and relief requested) into this CRAFTIS file. This process requires the staff member to analyze the case to determine what information must be entered into CRAFTIS and to input the data into the system. This stage of the process usually takes an average of 30 minutes per case.

The Effects of the Online Claim Notification Procedure

The proposed rule change would modify how an arbitration claim is filed in several ways. In the package of information sent to the Claimant, in addition to a Claim Information Sheet, there will be instructions on how to submit a Claim Information Form online, including procedures for accessing the system. Prior to submitting a claim for the first time, a Claimant will obtain a User Identification name ("User ID") and password through a self-registration process on the NASD Web site. Repeat Claimants, and attorneys who are submitting new claims on behalf of different Claimants, may continue to use their User ID and password to enter data for new cases.

⁹ Pursuant to the Code, "mailing" can be accomplished by first-class postage pre-paid, overnight mail service, or other method of delivery acceptable to the parties and the Director.

Certain Claimants will be required to complete and submit the Claim Information Form electronically. The proposed rule change would require Claimants with analyst-related arbitrations, who are represented by counsel, to complete part of the arbitration case filing process online. The proposed rule change provides that, in any case alleging that a customer, member, or associated person suffered a loss due to reliance on a recommendation from an analyst, the Claimant, if represented by counsel, must complete a Claim Information Form online that can be accessed through the NASD Web site.¹⁰ Once the Claimant or counsel (referred to herein collectively as “Claimant”) completes the Claim Information Form, Claimant will be prompted to print the NASD Dispute Resolution Tracking Form (“Tracking Form”). The Claimant would then complete the case filing process by filing a copy of the Tracking Form, the Statement of Claim,¹¹ executed Uniform Submission Agreement, and filing fee and hearing session deposit through the mail, as is current practice.¹²

Benefits of the Online Claim Notification Procedure

The online version of the Claim Information Form would gather information similar to the paper version currently in use, but the format would be upgraded to provide:

- A “look up” tool, that will be used to provide the exact name of the member or associated person for automatic insertion into the Claim Information Form;
- A link to the fee calculators, which will calculate the amount that should be remitted with the Statement of Claim; and

¹⁰ The final Web site address for the online claim filing system has not yet been determined; once finalized, however, it will be accessible at www.nasd.com.

¹¹ The system will give Claimants the option of submitting the Statement of Claim electronically as well; however, the Uniform Submission Agreement must be submitted in hard copy.

¹² Submission of documents through this online notification system does not alter the date a claim is filed; rather, filing a claim requires submission of documentation pursuant to Rule 10314(a).

- “Tool tips” to help the Claimant navigate the Claim Information Form.

These enhancements will enable Claimants to enter the required information more quickly and accurately. For example, the Claim Information Form will require that the Claimant list those members or associated persons who would be parties to the claim. The Claim Information Form “look up” tool will provide the exact name of the member or associated person. Once the Claimant has found the requisite information, the system will allow the Claimant to load the information automatically into the form fields, thus minimizing transcription errors. If, after a search using the “look up” tool, the Claimant is unable to find the requisite information, the Claimant may type whatever information the Claimant has into a text box on the form for intake staff to analyze.

The Claim Information Form will also provide a link to the existing online fee calculator, to assist the Claimant in determining the correct amount of fees and deposits associated with the claim.

Further, the Claim Information Form will provide on-screen guidance to Claimants through “tool tips,” which are small help screens that can be displayed in order to assist the Claimant in completing certain data elements.

Once the Claimant has completed the Claim Information Form, the system will generate a Tracking Form that will summarize the Claimant’s entries for review and provide a tracking number for the claim. Prior to submission, the Claimant will be prompted to print a hard copy of the Tracking Form to file with the other documentation to NASD Dispute Resolution. The system will also encourage the Claimant to print a copy as a receipt. The remaining aspects of the claim filing procedure remain unchanged from the Claimant’s perspective.

The intake staff in New York will be notified that a claim has been electronically submitted when it receives the Claimant's materials in hard copy with the Tracking Form attached. The intake staff will access the system and, using the tracking number or some other identifying information, locate the Claimant's data. The data will be stored in a secure "holding area" in the system, where an intake staff member will verify it, and then upload it into the CRAFTIS system. The uploaded data will instantly be transferred to the screens currently completed manually by applicable staff. Once this process is completed, the Claimant's file will be transferred to the appropriate NASD Dispute Resolution regional office, where the staff member will be able to analyze the case without having to input data into CRAFTIS.

Lastly, the proposed rule change will allow any other Claimant, irrespective of whether the Claimant is represented by counsel or has an analyst-related claim, to use the online claim notification procedure.

Conclusion

NASD Dispute Resolution believes that the online claim notification procedure will expedite the case intake process, provide better data accuracy, reduce manual data entry, and provide for more efficient claims intake and administration. Moreover, NASD Dispute Resolution believes that the implementation of a mandatory, Web-based arbitration claim notification procedure is the best mechanism available to handle the expected influx of analyst cases.¹³

NASD Dispute Resolution anticipates that it will take time for Claimants to become comfortable with the new procedures. Thus, NASD has decided to allow Claimants and counsel

¹³ NASD believes that most securities attorneys have access to the Internet. During the transition from paper filing to the online claim notification procedure, NASD staff will work with any Claimants' counsel who have technological problems with using this system.

to access the system on a voluntary “Beta test” basis while final enhancements are being completed. Once the proposed rule change is effective, all analyst claims in which Claimants are represented by counsel must be submitted using the Claim Information Form. Moreover, any other claims may be submitted using the online claim notification procedure on a voluntary basis. The proposed rule change will be implemented on a pilot basis, and will remain in effect for two years from its effective date, unless NASD requests an extension.

(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. In light of recent regulatory developments in the securities markets, NASD believes the proposed rule change will enhance the efficiency of the NASD arbitration forum, by providing a better mechanism to process new claims expeditiously, which, in turn, will help to manage and facilitate the anticipated increase in arbitration filings effectively.

(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 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