

May 9, 2002

Florence Harmon
Senior Special Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2002-62 - Amending Code of Arbitration Procedure to Conform Rule 10314(b) to the Current Minimum Standard Applicable to Claims

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 Jean I. Feeney, Associate Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959; e-mail jean.feeney@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”), 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 amend the Code of Arbitration Procedure (“Code”) to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim. Below is the text of the proposed rule change. Proposed new language is underlined: proposed deletions are in brackets.

* * *

CODE OF ARBITRATION PROCEDURE

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10314. Initiation of Proceedings

(a) Unchanged.

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

(1) Within 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 and available defenses [thereto that will be relied upon at the hearing] to the Statement of Claim submitted 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 on any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial [as an Answer] to a pleading that states specific facts and contentions may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(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 March 7, 2002, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Regulation Inc. 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 March 14, 2002. 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 Dispute Resolution will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission

approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to Jean I. Feeney, Associate Vice President and Chief Counsel, NASD Dispute Resolution, Inc., at (202) 728-6959; email jean.feeney@nasd.com.

3. 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 the Code to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim that was submitted by the claimant, rather than specifying all such facts and defenses that may be relied upon at the hearing.

As background, NASD Dispute Resolution recently streamlined its procedures for review of arbitration claims. NASD Dispute Resolution does not consider a Statement of Claim to be deficient if it meets the minimum requirements of a properly signed Uniform Submission Agreement that names the respondents as shown on the Statement of Claim, proper fees, and sufficient copies of the Statement of Claim. This has accelerated the claims review process, so that claims can be served promptly after filing.¹ Accordingly, the Statement of Claim may not contain details on the evidence to be presented at the hearing.

Rule 10314(b)(1) currently provides, however, that the “Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing,” and Rule

¹ Although the Uniform Forms Guide (last amended April 2001) (http://www.nasdaq.com/pdf-text/uniform_forms_guide.pdf) continues to recommend that the Statement of Claim set forth the details of the dispute, informal guidance for parties on the Dispute Resolution Website now states, “A claim is reviewed for the minimum requirements of a properly signed Submission Agreement, proper fees, and sufficient copies of the Statement of Claim. The Statement of Claim should include the dollar amount of damages requested, and the type of claims being made. Any deficiencies can delay the service of the claim.” Arbitration Case Flow (http://www.nasdaq.com/arb_case_flow.asp) (visited May 3, 2002).

10314(b)(2)(B) provides that a “Respondent who fails to specify all available defenses and relevant facts in such party’s Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party’s Answer at the hearing.”² Similarly, Rule 10314(b)(2)(A) provides that “Respondent who pleads only a general denial as an Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.”

The National Arbitration and Mediation Committee (NAMC) of NASD Dispute Resolution³ determined that the above provisions could place the respondent at an unfair disadvantage because the initial claim may be quite brief, but may be expanded substantially by the time of the hearing. Based on Rule 10314(b), the arbitrators may prevent the respondent from introducing additional facts or defenses to the expanded claim. The NAMC recommended, therefore, that Rule 10314(b)(1) be amended to provide that the Answer should only be required to specify all relevant facts and available defenses to the Statement of Claim submitted, which would make the requirement consistent with the streamlined claims procedure; and that Rule 10314(b)(2)(A) be amended to apply only to general denials to pleadings that state specific facts and contentions.

(b) Statutory Basis

NASD Dispute Resolution 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

² The term “defenses” in Rule 10314 is understood to include not only defenses to the specific allegations in the Statement of Claim, but also any affirmative defenses that the respondent may wish to set forth.

³ The NAMC includes representation from public investors, from the securities industry, and from the neutrals serving in the NASD Dispute Resolution forum. This diverse composition ensures a neutral approach in the administration of the forum.

investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by harmonizing the pleading requirements for claimants and respondents.

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

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

NASD DISPUTE RESOLUTION, INC.

BY: _____
Barbara Z. Sweeney,
Senior Vice President

Date: May 9, 2002

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2002-62)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amending Code of Arbitration Procedure to Conform Rule 10314(b) to the Current Minimum Standard Applicable to Claims

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 Dispute Resolution is proposing to amend the Code to conform Rule 10314(b) to the current minimum standard applicable to claims. 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.

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CODE OF ARBITRATION PROCEDURE

* * *

10314. Initiation of Proceedings

(c) Unchanged.

(d) Answer – Defenses, counter Claims and/or Cross-Claims

(1) Within 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 and available defenses [thereto that will be relied upon at the hearing] to the Statement of Claim submitted 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 on any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial [as an Answer] to a pleading that states specific facts and contentions may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(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 Dispute Resolution 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 Dispute Resolution has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(1) 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 the Code to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim that was submitted by the claimant, rather than specifying all such facts and defenses that may be relied upon at the hearing.

As background, NASD Dispute Resolution recently streamlined its procedures for review of arbitration claims, NASD Dispute Resolution does not consider a Statement of Claim to be deficient if it meets the minimum requirements of a properly signed Uniform Submission Agreement that names the same respondents as shown on the Statement of Claim, proper fees, and sufficient copies of the Statement of Claim. This has accelerated the

claims review process, so that claims can be served promptly after filing.³ Accordingly, the Statement of Claim may not contain details on the evidence to be presented at the hearing.

Rule 10314(b)(1) currently provides, however, that the “Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing,” and Rule 10314(b)(2)(B) provides that a “Respondent who fails to specify all available defenses and relevant facts in such party’s Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party’s Answer at the hearing.”⁴ Similarly, Rule 10314(b)(2)(A) provides that “Respondent who pleads only a general denial as an Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.”

The National Arbitration and Mediation Committee (NAMC) of NASD Dispute Resolution⁵ determined that the above provisions could place the respondent at an unfair disadvantage because the initial claim may be quite brief, but may be expanded substantially by the time of the hearing. Based on Rule 10314(b), the arbitrators may prevent the respondent from introducing additional facts or defenses to the expanded claim. The NAMC recommended, therefore, that Rule 10314(b)(1) be amended to provide that the Answer should only be required to specify all relevant facts and available defenses to the Statement of Claim submitted, which would make the requirement consistent with the streamlined

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claims procedure; and that Rule 10314(b)(2)(A) be amended to apply only to general denials to pleadings that state specific facts and contentions.

(b) Statutory Basis

NASD Dispute Resolution 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 Dispute Resolution believes that the proposed rule change will protect investors and the public interest by harmonizing the requirements for claimants and respondents.

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

NASD Dispute Resolution 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.

(3) 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