

Page 1 of <input type="text" value="19"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. SR - <input type="text" value="2004"/> - <input type="text" value="042"/> Amendment No. <input type="text" value="2"/>
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Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Mignon"/>	Last Name	<input type="text" value="McLemore"/>
Title	<input type="text" value="Counsel"/>		
E-mail	<input type="text" value="mignon.mclemore@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8151"/>	Fax	<input type="text" value="(202) 728-8833"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

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

Date	<input type="text" value="11/23/2004"/>
By	<input type="text" value="Jean I. Feeney"/>
	(Name)
	<input type="text" value="Vice President and Chief Counsel, Dispute Resolution"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Jean Feeney, jean.feeney@nasd.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C.

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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 proposal to adopt a new rule in the NASD Code of Arbitration Procedure (“Code”) regarding foreign hearing locations and to amend IM-10104 to allow payment of additional or increased honoraria to arbitrators who hear cases in foreign locations. Below is the text of the proposed rule change and of the proposed rule. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \*

**IM-10104. Arbitrators' Honorarium**

All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.

The honorarium shall be \$200 for each hearing session and \$75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be \$125.

The honorarium for travel to a canceled hearing session shall be \$50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of \$100.

The Director may authorize a higher or additional honorarium in special circumstances, such as the use of a foreign hearing location.

\* \* \*

**10315. [Designation of Time and Place] Determination of Hearing Location**

(a) Designation of Time and Place of Hearing

The Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing, and shall give notice of the time and place at least 15 business days prior to the date fixed for the first meeting by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give notice as the arbitrators may determine. Attendance at a meeting waives notice thereof.

(b) Foreign Hearing Location

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met NASD background qualifications for arbitrators;

(B) received training on NASD arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may

be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rules 10205 and 10332.

\* \* \*

(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 January 21, 2004, 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 January 22, 2004. 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 60 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

(a) Purpose

Background

Dispute Resolution maintains a roster of qualified neutrals (i.e., arbitrators and mediators) in 51 cities in the United States and Puerto Rico. In accordance with the Code, the Director of Arbitration sets the hearing location for NASD arbitration cases. For cases involving public customers, the Director generally designates the hearing location that is closest to the public customer's residence at the time of the events in dispute. However, for claimants who reside outside of the United States, NASD sets the hearing in the NASD hearing location that is most logical for the case. Generally, consideration is given to a number of factors, including the preferences of the parties, the location of counsel or witnesses, and the availability of transportation routes to cities in the United States.

The first foreign hearing location for NASD arbitrations will be in London. Dispute Resolution has formed a relationship with the Chartered Institute of Arbitrators ("CI Arb"), a well-respected organization capable of assisting Dispute Resolution in providing dispute resolution services for international cases. The CI Arb, established in 1915, is based in London and maintains a worldwide roster of neutrals. The CI Arb specializes in, among other areas, providing dispute resolution services for banking, finance, business, commercial, and international issues. CI Arb's neutrals are required to

complete a rigorous training program and to pass testing and interview requirements before being qualified for appointment to cases. The CIArb's training requirements exceed any standards currently employed by a United States ("U.S.") forum. CIArb's neutrals must meet NASD's background qualification requirements. NASD, upon approval of its National Arbitration and Mediation Committee, agreed to accept the CIArb training and testing requirements for arbitrators as a substitute for NASD training and testing. In addition, NASD conducted training for CIArb neutrals on NASD arbitration rules and procedures. Therefore, NASD believes that a partnership between CIArb and NASD will provide NASD's international constituents with access to a local roster of experienced neutrals as well as the convenience and cost efficiency of conducting hearing sessions within a reasonable distance from their place of business or residence.

#### Procedures for Foreign Hearing Location Cases

The foreign hearing location process will be voluntary. Parties seeking arbitration would still file with NASD the claim information, submission agreements, and other related documents currently required by NASD rules. Once Dispute Resolution has determined that an arbitration case can be handled using a foreign hearing location, Dispute Resolution would inform claimants residing in the United Kingdom ("U.K.") or other European countries, about the availability and the additional costs of the appropriate foreign hearing location.

If the claimant wishes to use a foreign hearing location, Dispute Resolution will seek the agreement of the respondents. As a condition of using a foreign hearing location, the parties must agree to accept the special Foreign Hearing Location Surcharge



to cover the additional daily cost for the neutrals' service in that location. CIArb neutrals have agreed to serve in NASD cases at daily rates that are lower than their normal charges. However, those reduced rates are still significantly higher than the arbitrator honorarium rates paid by NASD. To cover the additional cost of the foreign neutral fee, NASD will assess the daily Foreign Hearing Location Surcharge for parties agreeing to use the London hearing location. This surcharge will be used solely to pay additional honorarium to the foreign neutrals, and not to cover any other NASD expenses.<sup>1</sup> Further, NASD anticipates establishing similar arrangements in other foreign locations, and believes this proposed rule change would provide the flexibility to expand its dispute resolution services to those locations in the future.

The NASD Dispute Resolution Business Development staff, with the cooperation of CIArb's administrative staff, will administer all cases designated by mutual consent for hearing in a foreign location. NASD will add information about CIArb neutrals to the Neutral List Selection System so that the background disclosures provided to parties and the arbitrator selection process will be the same as in other hearing locations. The Code, with the addition of the Foreign Hearing Location Surcharge, will govern all case administration.

#### Conclusion

The proposed rule change will provide those parties residing in foreign locations with the option of holding their arbitration hearings closer to home, using local arbitrators, and saving the expenses of traveling to the U.S. to resolve their disputes.

NASD believes that the expenses saved by the parties will offset the Foreign Hearing

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<sup>1</sup> The amount of the surcharge may vary depending on factors such as the daily rates for neutrals in a foreign hearing location and the currency exchange rates.

Location Surcharge. The voluntary aspect of the proposed rule change, however, will allow these parties to decide in each matter whether a foreign hearing location or U.S. hearing location is preferable.

(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 the proposed rule change will expand access to its arbitration forum internationally and ultimately, will result in more transparency in the global securities markets.

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: \_\_\_\_\_

Jean I. Feeney, Vice President and Chief Counsel,  
Dispute Resolution

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2004-042)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Foreign Hearing Locations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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”) and amended on November 23, 2004,<sup>3</sup> 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 is proposing to adopt a new rule in the NASD Code of Arbitration Procedure (“Code”) regarding foreign hearing locations and to amend IM-10104 to allow payment of additional or increased honoraria to arbitrators who hear cases in foreign locations. Below is the text of the proposed rule change and of the proposed rule. Proposed new language is in italics; proposed deletions are in brackets.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 2 to SR-NASD-2004-042 amends the proposed rule language to, among other things, add qualifications for foreign arbitrators to Rule 10315(b)(1).

**IM-10104. Arbitrators' Honorarium**

All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.

The honorarium shall be \$200 for each hearing session and \$75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be \$125.

The honorarium for travel to a canceled hearing session shall be \$50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of \$100.

The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

\* \* \*

**10315. [Designation of Time and Place] Determination of Hearing Location**

**(a) Designation of Time and Place of Hearing**

The Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing, and shall give notice of the time and place at least 15 business days prior to the date fixed for the first meeting by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the

meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give notice as the arbitrators may determine. Attendance at a meeting waives notice thereof.

(b) Foreign Hearing Location

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(A) met NASD background qualifications for arbitrators;

(B) received training on NASD arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rules 10205 and 10332.

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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 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**

Background

Dispute Resolution maintains a roster of qualified neutrals (i.e., arbitrators and mediators) in 51 cities in the United States and Puerto Rico. In accordance with the Code, the Director of Arbitration sets the hearing location for NASD arbitration cases. For cases involving public customers, the Director generally designates the hearing location that is closest to the public customer's residence at the time of the events in dispute. However, for claimants who reside outside of the United States, NASD sets the hearing in the NASD hearing location that is most logical for the case. Generally, consideration is given to a number of factors, including the preferences of the parties, the location of counsel or witnesses, and the availability of transportation routes to cities in the United States.

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#### Procedures for Foreign Hearing Location Cases

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If the claimant wishes to use a foreign hearing location, Dispute Resolution will seek the agreement of the respondents. As a condition of using a foreign hearing location, the parties must agree to accept the special Foreign Hearing Location Surcharge to cover the additional daily cost for the neutrals' service in that location. CIArb neutrals have agreed to serve in NASD cases at daily rates that are lower than their normal charges. However, those



reduced rates are still significantly higher than the arbitrator honorarium rates paid by NASD. To cover the additional cost of the foreign neutral fee, NASD will assess the daily Foreign Hearing Location Surcharge for parties agreeing to use the London hearing location. This surcharge will be used solely to pay additional honorarium to the foreign neutrals, and not to cover any other NASD expenses.<sup>4</sup> Further, NASD anticipates establishing similar arrangements in other foreign locations, and believes this proposed rule change would provide the flexibility to expand its dispute resolution services to those locations in the future.

The NASD Dispute Resolution Business Development staff, with the cooperation of CI Arb's administrative staff, will administer all cases designated by mutual consent for hearing in a foreign location. NASD will add information about CI Arb neutrals to the Neutral List Selection System so that the background disclosures provided to parties and the arbitrator selection process will be the same as in other hearing locations. The Code, with the addition of the Foreign Hearing Location Surcharge, will govern all case administration.

#### Conclusion

The proposed rule change will provide those parties residing in foreign locations with the option of holding their arbitration hearings closer to home, using local arbitrators, and saving the expenses of traveling to the U.S. to resolve their disputes. NASD believes that the expenses saved by the parties will offset the Foreign Hearing Location Surcharge. The voluntary aspect of the proposed rule change, however, will allow these parties to decide in each matter whether a foreign hearing location or U.S. hearing location is preferable.

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<sup>4</sup> The amount of the surcharge may vary depending on factors such as the daily rates for neutrals in a foreign hearing location and the currency exchange rates.

**(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 the proposed rule change will expand access to its arbitration forum internationally and ultimately, will result in more transparency in the global securities markets.

**(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