

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" 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 checked="" 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).

The proposed rule change removes unnecessary cross references and corrects a grammatical error in Rule 10308(a)(5)(B).

**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  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**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   
 By  Vice President and Chief Counsel, NASD Dispute Resolution  
 (Name) (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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information**

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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**

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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**

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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**

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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**

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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**

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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**

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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.

**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 remove unnecessary cross references and correct a grammatical error in Rule 10308(a)(5)(B).

Below is the text of the proposed rule change.<sup>1</sup> Proposed new language is underlined; proposed deletions are in brackets.

\*\*\*\*\*

**10308. Selection of Arbitrators**

**(a) Definitions**

(1) through (4) No change.

**(5) "public arbitrator"**

(A) No change.

(B) For [the] purposes of this Rule, the term "immediate family member" means:

(i) [the] a person's parent, stepparent, child, or stepchild[, of a person engaged in the conduct or activities described in paragraphs

(a)(4)(A) through (D)];

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<sup>1</sup> Rule 10308 will be renumbered following Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes. See Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR-NASD-2003-158); and the NASD Code of Arbitration Procedure for Industry Disputes; see Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR-NASD-2004-011).

(ii) a member of [the] a person's household [of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(iii) an individual to whom a person [who receives] provides financial support of more than 50 percent of [his or her] the individual's annual income [from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)]; or

(iv) a person who is claimed as a dependent for federal income tax purposes [by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)].

(6) through (7) No change.

(b) through (f) No change.

\* \* \* \* \*

(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 December 5, 2006, 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 December 6, 2006. 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 Jean I. Feeney, Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959.

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

(a) Purpose

The purpose of the proposed rule change is to amend Rule 10308 of the NASD Code of Arbitration Procedure (“Code”) to remove unnecessary cross references in the definition of “immediate family member,” and to correct a grammatical error, in Rule 10308(a)(5)(B).

NASD believes that the cross-references to “a person engaged in the conduct or activities described in paragraph (a)(4)(A) through (D)” in the definition of immediate family member are redundant when read in conjunction with other paragraphs of Rule 10308. For example, Rule 10308(a)(5)(A)(vii) provides that a person may be a public arbitrator if he or she “is not the spouse or immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).”<sup>2</sup> The definition of “immediate family member” in Rule 10308(a)(5)(B) states, in part, “For the purpose of this Rule, the term “immediate family member” means ... (i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)....” Thus, both the rule and the definition refer redundantly to “a person [who is] engaged in the conduct or activities described in

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<sup>2</sup> The Commission recently approved amendments to Rule 10308, effective January 15, 2007, in which paragraph (a)(5)(A)(vii) was renumbered. Securities Exchange Act Release No. 54607 (October 16, 2006), 71 Federal Register 62026 (October 20, 2006) (File No. SR-NASD-2005-094).

paragraphs (a)(4)(A) through (D).”

Moreover, new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308 were recently added to provide that persons who are otherwise qualified may not serve as public arbitrators if they have certain family members who are employed by, or serve as officers or directors of, entities in a control relationship with a broker-dealer.<sup>3</sup> In these instances, there is no need to refer to paragraphs (a)(4)(A) through (D) as those paragraphs are not at issue. Rather, what is important is the family relationship itself.

For these reasons, NASD proposes to amend the examples of family relationships in the definition of “immediate family member” in a non-substantive way to retain the relationships themselves but to omit reference to paragraphs (a)(4)(A) through (D) of the rule. As noted above, such a reference is already in Rule 10308(a)(5)(A)(vii), so arbitrators who have an immediate family member engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) will continue to be ineligible to serve as public arbitrators. Other arbitrators who may be affected by new paragraphs (a)(5)(A)(v) and (vi) will be able to refer to a clearer definition of “immediate family member” under the proposed rule change.

In removing references to paragraphs (a)(4)(A) through (D), the syntax sometimes required that a phrase be rearranged, but NASD does not intend to make any change in the substance of the definitions or in how they are construed.

Finally, NASD proposes to correct a grammatical error in Rule 10308(a)(5)(B), which uses the term “for the purpose of” instead of the more common phrase “for purposes of” as used in the rest of this rule (see, for example, Rule 10308(a)(1), (2), (6), and (7)).

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<sup>3</sup> Id.

NASD is filing this proposed rule change for immediate effectiveness, so that these proposed non-substantive changes to the definition of “immediate family member” can become operational on January 15, 2007, the same time as the most recent changes to the definition of public arbitrator, which refer to this definition.<sup>4</sup> NASD believes this proposal will help clarify Rule 10308, and make it easier to determine the proper classification of an arbitrator.

(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 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 is consistent with the provision of the Act noted above because it will assist in the administration of arbitrations by making Rule 10308 easier to understand and apply.

**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

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<sup>4</sup> Id.

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)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>6</sup> in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing. NASD requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii),<sup>7</sup> so that NASD may implement the rule change on January 15, 2007, simultaneously with other changes to Rule 10308 being implemented on that date. In accordance with Rule 19b-4,<sup>8</sup> NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

**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.

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> 17 CFR 240.19b-4.



SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- \_\_\_\_\_; File No. SR-NASD-2006-136)

Self-Regulatory Organizations; National Association of Securities Dealers Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Correct Technical and Grammatical Errors in Rule 10308

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 \_\_\_\_\_, 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. 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 Rule 10308 of the NASD Code of Arbitration Procedure (“Code”) to remove unnecessary cross references in the definition of “immediate family member,” and to correct a grammatical error, in Rule 10308(a)(5)(B). Below is the text of the proposed rule change. 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.

\* \* \*

**10308. Selection of Arbitrators**

**(a) Definitions**

(1) through (4) No change.

**(5) "public arbitrator"**

(A) No change.

(B) For [the] purposes of this Rule, the term "immediate family member"

means:

(i) [the] a person's parent, stepparent, child, or stepchild[, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(ii) a member of [the] a person's household [of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(iii) an individual to whom a person [who receives] provides financial support of more than 50 percent of the Individual's annual income [from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)]; or

(iv) a person who is claimed as a dependent for federal income tax purposes [by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)].

(6) through (7) No change.

(b) through (f) No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

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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

1. **Purpose**

NASD believes that the cross-references to “a person engaged in the conduct or activities described in paragraph (a)(4)(A) through (D)” in the definition of immediate family member are redundant when read in conjunction with other paragraphs of Rule 10308. For example, Rule 10308(a)(5)(A)(vii) provides that a person may be a public arbitrator if he or she “is not the spouse or immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).”<sup>3</sup> The definition of “immediate family member” in Rule 10308(a)(5)(B) states, in part, “For the purpose of this Rule, the term “immediate family member” means ... (i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)....” Thus, both the rule and the definition refer redundantly to “a person [who is] engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).”

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<sup>3</sup> The Commission recently approved amendments to Rule 10308, effective January 15, 2007, in which paragraph (a)(5)(A)(vii) was renumbered. Securities Exchange Act Release No. 54607 (October 16, 2006), 71 Federal Register 62026 (October 20, 2006) (File No. SR-NASD-2005-094).

Moreover, new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308 were recently added to provide that persons who are otherwise qualified may not serve as public arbitrators if they have certain family members who are employed by, or serve as officers or directors of, entities in a control relationship with a broker-dealer.<sup>4</sup> In these instances, there is no need to refer to paragraphs (a)(4)(A) through (D) as those paragraphs are not at issue. Rather, what is important is the family relationship itself.

For these reasons, NASD proposes to amend the examples of family relationships in the definition of “immediate family member” in a non-substantive way to retain the relationships themselves but to omit reference to paragraphs (a)(4)(A) through (D) of the rule. As noted above, such a reference is already in Rule 10308(a)(5)(A)(vii), so arbitrators who have an immediate family member engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) will continue to be ineligible to serve as public arbitrators. Other arbitrators who may be affected by new paragraphs (a)(5)(A)(v) and (vi) will be able to refer to a clearer definition of “immediate family member” under the proposed rule change.

In removing references to paragraphs (a)(4)(A) through (D), the syntax sometimes required that a phrase be rearranged, but NASD does not intend to make any change in the substance of the definitions or in how they are construed.

Finally, NASD proposes to correct a grammatical error in Rule 10308(a)(5)(B), which uses the term “for the purpose of” instead of the more common phrase “for purposes of” as used in the rest of this rule (see, for example, Rule 10308(a)(1), (2), (6), and (7)).

NASD is filing this proposed rule change for immediate effectiveness, so that these proposed non-substantive changes to the definition of “immediate family member” can become operational on January 15, 2007, the same time as the most recent changes to the definition of

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<sup>4</sup> Id.

public arbitrator, which refer to this definition.<sup>5</sup> NASD believes this proposal will help clarify Rule 10308, and make it easier to determine the proper classification of an arbitrator.

## 2. **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 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 is consistent with the provision of the Act noted above because it will assist in the administration of arbitrations by making Rule 10308 easier to understand and apply.

### (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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder<sup>7</sup> as it is concerned solely with the administration of a self-regulatory organization.

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<sup>5</sup> Id.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 C.F.R. 240.19b-4(f)(3).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-136 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2006-136. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2006-136 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jonathan G. Katz  
Secretary

Action as set forth or recommended herein  
APPROVED pursuant to authority delegated by  
the Commission under Public Law 87-592.

For the Division of Market Regulation

by: \_\_\_\_\_

(DATE)

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<sup>8</sup> 17 CFR 200.30-3(a)(12).