

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 checked="" 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).

NASD is proposing to amend the Customer, Industry and Mediation Codes to implement technical changes to the three new Codes prior to the effective date of the Customer and Industry Codes.

**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 amend the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”), NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”), and NASD Code of Mediation Procedure (“Mediation Code”), to delete rule language that was rescinded prior to the approval of these three Codes, to change a reference that was amended by a separate NASD proposal, and to insert rule language that was approved by the SEC prior to its approval of the Customer and Industry Codes, but was inadvertently omitted from the Customer and Industry Codes.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\*\*\*\*

### **Customer Code**

#### **IM-12000. Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes**

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a) - (c) No change;

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or

other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD[;]

[(f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are:

- (1) customers with a claim against a member or an associated person;
- (2) associated persons with a claim against a member or an associated person;
- (3) members with a claim against another member; or
- (4) members with a claim against an associated person that relates exclusively to a promissory note.

Written waiver by such parties shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This paragraph applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons].

Remainder of rule – No change.

\*\*\*\*

#### **12102. National Arbitration and Mediation Committee**

(a) Pursuant to [Part V(C)(1)(b)] Section III of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

Remainder of rule – No change.

\*\*\*\*

#### **12206. Time Limits**

(a) - (b) No change.

#### **(c) Effect of Rule on Time Limits for Filing Claim in Court**

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by

a court of competent jurisdiction upon request of a member or associated person.  
 However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while NASD retains jurisdiction of the claim.

(d) No change.

\* \* \* \* \*

## **Industry Code**

### **IM-13000. Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes**

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a) - (c) No change;

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD[;]

[(f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are:

- (1) customers with a claim against a member or an associated person;
- (2) associated persons with a claim against a member or an associated person;
- (3) members with a claim against another member; or
- (4) members with a claim against an associated person that relates exclusively to a promissory note.

Written waiver by such parties shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This paragraph applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons].

Remainder of rule – No change.

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(a) Pursuant to [Part V(C)(1)(b)] Section III of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

Remainder of rule – No change.

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### **13206. Time Limits**

(a) - (b) No change.

#### **(c) Effect of Rule on Time Limits for Filing Claim in Court**

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while NASD retains jurisdiction of the claim.

(d) No change.

\*\*\*\*

## **NASD CODE OF MEDIATION PROCEDURE**

**14100 – 14101.** No change.

### **14102. National Arbitration and Mediation Committee**

(a) Pursuant to [Part V(C)(1)(b)] Section III of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

Remainder of rule – No change.

**14103 - 14109.** No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

(a) The proposal to create the Customer, Industry and Mediation Codes was approved by the Board of Directors of NASD Dispute Resolution at its meeting on April 23, 2003, which authorized the filing of the rule change with the SEC. Counsel for the Nasdaq Stock Market and NASD Regulation were 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 April 24, 2003. 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 has filed the proposed rule change for immediate effectiveness.

(b) Questions regarding this rule filing may be directed to Mignon McLemore, Assistant Chief 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

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations to use “plain English” in disclosure documents and other materials used by investors. In response, NASD undertook to rewrite the NASD Code of Arbitration Procedure (“old Code”) in “plain English.” This undertaking became the Code Revision

Project (Project).

NASD began to implement the Project in 2003 when it filed with the SEC a proposed rule change to the old Code to reorganize the rules, simplify the language, codify current practices, and implement several substantive changes.<sup>1</sup> The proposal reorganized NASD's old dispute resolution rules (Rules 10000 et seq.) into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes ("Customer Code"); the NASD Code of Arbitration Procedure for Industry Disputes ("Industry Code"); and the NASD Code of Mediation Procedure ("Mediation Code").<sup>2</sup> The Customer, Industry and Mediation Codes would replace the old Code in its entirety.

On October 31, 2005, the SEC approved the Mediation Code.<sup>3</sup> It became effective on January 30, 2006.<sup>4</sup>

On January 24, 2007, the SEC approved the Customer Code and Industry Code (collectively, "new Codes").<sup>5</sup> The Customer and Industry Codes will become effective

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<sup>1</sup> See Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (File No. SR-NASD-2003-158) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Code of Arbitration Procedure for Customer Disputes).

<sup>2</sup> In 2004, NASD filed the Industry and Mediation Codes separately. See Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (File No. SR-NASD-2004-011) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Code of Arbitration Procedure for Industry Disputes); and see Securities Exchange Act Release No. 51855 (June 15, 2005), 70 FR 36440 (June 23, 2005) (File No. SR-NASD-2004-013) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto to Amend NASD Arbitration Rules for Mediation Proceedings).

<sup>3</sup> See Securities Exchange Act Release No. 52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (File No. SR-NASD-2004-013) (Order Granting Approval to Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, and Notice and Filing and Order Granting Accelerated Approval to Amendment No. 3, to Amend NASD Rules for Mediation Proceedings).

<sup>4</sup> The changes were announced in Notice to Members 05-85 (December 2005).

<sup>5</sup> See Securities Exchange Act Release No. 55158 (Jan. 24, 2007); 72 FR 4574 (Jan. 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011) (Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto; Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Industry Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto).

on April 16, 2007.<sup>6</sup>

Prior to the effective date of the new Codes, NASD is proposing several technical, nonsubstantive amendments to the Customer, Industry, and Mediation Codes. With these amendments, NASD is proposing to delete language that was rescinded prior to the approval of the Project, to change a reference that was amended by a separate NASD proposal, and to insert rule language that was approved by the SEC prior to its approval of the Project, but was inadvertently omitted from the new Codes.

First, NASD proposes to delete Interpretive Material (IM) 12000(f) and IM-13000(f) from the new Codes because these paragraphs were rescinded by SR-NASD-2005-070.<sup>7</sup> The provisions were included in IM-12000 and IM-13000 of the new Codes inadvertently, and should be removed.

Second, NASD proposes to amend the numerical reference in Rule 12102(a) of the Customer Code, Rule 13102(a) of the Industry Code and Rule 14102(a) of the Mediation Code, which identifies the part of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) that applies to NASD Dispute Resolution. In a proposal filed on September 5, 2006 to reflect the complete separation of the NASD from The Nasdaq Stock Market, NASD amended the number of the section of the Delegation Plan that applies to NASD Dispute Resolution.<sup>8</sup> As a result of this

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<sup>6</sup> The changes were announced in Notice to Members 07-07 (February 2007).

<sup>7</sup> See Securities Exchange Act Release No. 51825 (June 13, 2005); 70 FR 35482 (June 20, 2005) (File No. SR-NASD-2005-070) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Rescinding the Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Relating to the Waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration).

<sup>8</sup> See Securities Exchange Act Release No. 54798 (November 21, 2006); 71 FR 69156 (November 29, 2006) (File No. SR-NASD-2006-104) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To

change, NASD is proposing to amend Rules 12102(a), 13102(a), and 14102(a) to change the reference to the Delegation Plan.

Finally, NASD proposes to insert rule language that was approved by the SEC prior to its approval of the Project, but was inadvertently omitted from the new Codes. On June 19, 2003, NASD filed a proposal to amend Rule 10304 of the old Code to clarify that arbitration eligibility determinations are made by the arbitrators. On November 22, 2004, the SEC approved the proposed rule change, which had been amended to include a provision that would strengthen the “anti-bifurcation” provision of NASD Rule 3110(f).<sup>9</sup> This provision was inadvertently omitted from the new Codes. NASD is, therefore, proposing to insert this provision in Rules 12206(c) and 13206(c) of the new Codes.

(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 clarifying the Customer, Industry, and Mediation Codes, which will make them easier to understand and apply.

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Reflect Nasdaq’s Complete Separation From the NASD Upon the NASDAQ Stock Market LLC’s Operation as a National Securities Exchange for Non-Nasdaq Exchange-Listed Securities).

<sup>9</sup> See Securities Exchange Act Release No. 50714 (November 22, 2004); 69 FR 69971 (December 1, 2004) (File No. SR-NASD-2003-101) (Order Granting Approval to Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and 2 Thereto Relating to Time Limits for Submission of Claims in Arbitration).

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**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(3) thereunder,<sup>11</sup> NASD has designated this proposal as concerned solely with the administration of the self-regulatory organization, which renders the proposed rule change effective immediately upon filing. The proposed rule change is concerned solely with the administration of NASD in that it clarifies the Customer, Industry, and Mediation Codes by removing obsolete references, and inserting rule language that had been previously approved by the SEC, but was inadvertently omitted from the new Codes.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 C.F.R. 240.19b-4(f)(3).

**9. Exhibits**

1. Completed notice of proposed rule change for publication in the Federal Register.

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-\_\_\_\_\_; File No. SR-NASD-2007-026

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Implement Technical Changes to the Customer, Industry and Mediation Codes

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 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”) on April 13, 2007, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. NASD has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Dispute Resolution is proposing to amend the NASD Codes of Arbitration Procedure for Customer Disputes and for Industry Disputes, and to amend the NASD Code Mediation Procedure to delete rule language that was rescinded prior to the approval of these three Codes, to change a reference that was amended by a separate NASD proposal, and to insert rule language that was approved by the SEC prior to its approval of the Customer and Industry Codes, but was inadvertently omitted from the Customer and Industry Codes.

Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \*

**Customer Code**

**IM-12000. Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes**

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a) - (c) No change;

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD[;]

[(f) fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are:

(1) customers with a claim against a member or an associated person;

- (2) associated persons with a claim against a member or an associated person;
- (3) members with a claim against another member; or
- (4) members with a claim against an associated person that relates exclusively to a promissory note.

Written waiver by such parties shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This paragraph applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons].

Remainder of rule – No change.

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**12102. National Arbitration and Mediation Committee**

(a) Pursuant to [Part V(C)(1)(b)] Section III of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

Remainder of rule – No change.

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**12206. Time Limits**

(a) - (b) No change.

**(c) Effect of Rule on Time Limits for Filing Claim in Court**

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while NASD retains jurisdiction of the claim.

(d) No change.

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**Industry Code****IM-13000. Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes**

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(a) - (c) No change;

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by NASD, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by NASD[;]

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- (1) customers with a claim against a member or an associated person;
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Remainder of rule – No change.

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(d) No change.

\* \* \* \*

**NASD CODE OF MEDIATION PROCEDURE**

**14100 – 14101.** No change.

**14102. National Arbitration and Mediation Committee**

(a) Pursuant to [Part V(C)(1)(b)] Section III of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

Remainder of rule – No change.

**14103 - 14109.** No change.

\* \* \* \*

**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

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations to use “plain English” in disclosure documents and other materials used by investors. In response, NASD undertook to rewrite the NASD Code of Arbitration Procedure (“old Code”) in “plain English.” This undertaking became the Code Revision Project (Project).

NASD began to implement the Project in 2003 when it filed with the SEC a proposed rule change to the old Code to reorganize the rules, simplify the language, codify current practices, and implement several substantive changes.<sup>5</sup> The proposal reorganized NASD’s old dispute resolution rules (Rules 10000 et seq.) into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”); the NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”); and the NASD Code of Mediation Procedure (“Mediation Code”).<sup>6</sup> The Customer, Industry and Mediation Codes would replace the old Code in its entirety.

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<sup>5</sup> See Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (File No. SR-NASD-2003-158) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Code of Arbitration Procedure for Customer Disputes).

<sup>6</sup> In 2004, NASD filed the Industry and Mediation Codes separately. See Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (File No. SR-NASD-2004-011) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Code of Arbitration Procedure for Industry Disputes); and see Securities Exchange Act Release No. 51855 (June 15, 2005), 70 FR 36440 (June 23, 2005) (File No. SR-NASD-2004-013) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto to Amend NASD Arbitration Rules for Mediation Proceedings).

On October 31, 2005, the SEC approved the Mediation Code.<sup>7</sup> It became effective on January 30, 2006.<sup>8</sup>

On January 24, 2007, the SEC approved the Customer Code and Industry Code (collectively, “new Codes”).<sup>9</sup> The Customer and Industry Codes will become effective on April 16, 2007.<sup>10</sup>

Prior to the effective date of the new Codes, NASD is proposing several technical, nonsubstantive amendments to the Customer, Industry, and Mediation Codes. With these amendments, NASD is proposing to delete language that was rescinded prior to the approval of the Project, to change a reference that was amended by a separate NASD proposal, and to insert rule language that was approved by the SEC prior to its approval of the Project, but was inadvertently omitted from the new Codes.

First, NASD proposes to delete Interpretive Material (IM) 12000(f) and IM-13000(f) from the new Codes because these paragraphs were rescinded by SR-NASD-2005-070.<sup>11</sup> The provisions were included in IM-12000 and IM-13000 of the new Codes inadvertently, and should be removed.

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<sup>7</sup> See Securities Exchange Act Release No. 52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (File No. SR-NASD-2004-013) (Order Granting Approval to Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, and Notice and Filing and Order Granting Accelerated Approval to Amendment No. 3, to Amend NASD Rules for Mediation Proceedings).

<sup>8</sup> The changes were announced in Notice to Members 05-85 (December 2005).

<sup>9</sup> See Securities Exchange Act Release No. 55158 (Jan. 24, 2007); 72 FR 4574 (Jan. 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011) (Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto; Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Industry Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto).

<sup>10</sup> The changes were announced in Notice to Members 07-07 (February 2007).

<sup>11</sup> See Securities Exchange Act Release No. 51825 (June 13, 2005); 70 FR 35482 (June 20, 2005) (File No. SR-NASD-2005-070) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Rescinding the Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Relating to the Waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration).

Second, NASD proposes to amend the numerical reference in Rule 12102(a) of the Customer Code, Rule 13102(a) of the Industry Code and Rule 14102(a) of the Mediation Code, which identifies the part of the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) that applies to NASD Dispute Resolution. In a proposal filed on September 5, 2006 to reflect the complete separation of the NASD from The Nasdaq Stock Market, NASD amended the number of the section of the Delegation Plan that applies to NASD Dispute Resolution.<sup>12</sup> As a result of this change, NASD is proposing to amend Rules 12102(a), 13102(a), and 14102(a) to change the reference to the Delegation Plan.

Finally, NASD proposes to insert rule language that was approved by the SEC prior to its approval of the Project, but was inadvertently omitted from the new Codes. On June 19, 2003, NASD filed a proposal to amend Rule 10304 of the old Code to clarify that arbitration eligibility determinations are made by the arbitrators. On November 22, 2004, the SEC approved the proposed rule change, which had been amended to include a provision that would strengthen the “anti-bifurcation” provision of NASD Rule 3110(f).<sup>13</sup> This provision was inadvertently omitted from the new Codes. NASD is, therefore, proposing to insert this provision in Rules 12206(c) and 13206(c) of the new Codes.

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<sup>12</sup> See Securities Exchange Act Release No. 54798 (November 21, 2006); 71 FR 69156 (November 29, 2006) (File No. SR-NASD-2006-104) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Reflect Nasdaq’s Complete Separation From the NASD Upon the NASDAQ Stock Market LLC’s Operation as a National Securities Exchange for Non-Nasdaq Exchange-Listed Securities).

<sup>13</sup> See Securities Exchange Act Release No. 50714 (November 22, 2004); 69 FR 69971 (December 1, 2004) (File No. SR-NASD-2003-101) (Order Granting Approval to Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and 2 Thereto Relating to Time Limits for Submission of Claims in Arbitration).

(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 is consistent with the provision of the Act noted above because it will assist in the administration of arbitrations by clarifying the Customer, Industry, and Mediation Codes, which will make them 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 by NASD.

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 and paragraph (f) of Rule 19b-4 thereunder.<sup>14</sup> 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

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<sup>14</sup> 17 CFR 240.19b-4(f)(3).

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-2007-026 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2007-026. 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-2007-026 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>15</sup>

Florence E. Harmon  
Deputy 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>15</sup>

17 CFR 200.30-3(a)(12).