

March 5, 2004

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **File No. SR-NASD-2003-69, Amendment No. 1 – Proposed Amendments to Proposed Rule Change Regarding Failure to Pay Arbitration Awards**

Dear Ms. Engl and:

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) hereby submits to the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 1 to SR-NASD-2003-69 (the “Rule Filing”) relating to proposed amendments to the NASD By-Laws to clarify the meaning of the word “termination” as used in Article V, Subsection 4(b).

Pursuant to discussions with Commission staff, NASD hereby proposes to make the following amendments to the Rule Filing:

1. NASD proposes to clarify the meaning of the term “termination” as used in Article V, Subsection 4(b) by adding the following sentence to the end of the first paragraph on pages 6 and 14 of the Rule Filing. Proposed new text is underlined.

Article VI, Section 3 of the NASD By-Laws (Dues, Assessments and Other Charges) allows NASD to seek suspensions or cancellations for failure to comply with an award or settlement agreement relating to an arbitration or mediation.¹ If a person becomes subject to an arbitration award or enters into a settlement

¹ The Rule 9510 Series describes the process by which NASD may suspend or cancel the membership of any member or the registration of any person for failure to pay an arbitration award or settlement agreement executed in connection with an arbitration or mediation occurring under NASD Rules.

agreement in arbitration while associated with a member, then terminates his or her association with the member before paying the arbitration award or settlement, NASD may bring an action against that former associated person based on his or her failure to pay. Such actions are permissible because Article V, Section 4 of the NASD By-Laws (Retention of Jurisdiction) provides that a person whose association with a member has terminated continues to be subject to NASD proceedings based on conduct that began before the termination, provided such proceeding is brought within two years after the termination. The word "termination" as used in Article V, Section 4 shall mean the following: (1) when applied to associated persons who are registered with NASD, that time when a Form U5 with respect to such person is filed with NASD; or (2) when applied to associated persons who are not registered with NASD, that time when such person ceases to be associated with a member, regardless of whether, in the case of (1) or (2), such termination is voluntary or involuntary, or with or without cause.

2. NASD proposes to clarify the relationship between existing Article V, Subsection 4(a) and proposed Article V, Subsection 4(b) by adding the following sentence to the end of the first paragraph on page 7 and the last paragraph on page 14 of the Rule Filing. Proposed new text is underlined.

NASD is concerned that a person associated with a member will terminate his or her association with the member once aware that an arbitration award may be entered against him or her in order to avoid sanction by NASD for failure to pay any award or settlement agreement resulting from the proceeding. Accordingly, the proposed rule change provides that for the limited purpose of instituting proceedings for failure to pay arbitration awards or settlements, NASD retains, for a period of two years after the entry of the award or settlement, jurisdiction to impose suspensions against former associated persons if the award or settlement resulted from a claim submitted for arbitration or mediation pursuant to the NASD Rules. Suspending these persons will prevent them from re-entering the industry until the award is paid. Proposed Subsection 4(b) does not limit in any manner the authority of NASD to act pursuant to Subsection 4(a).

Pursuant to discussions with SEC staff, we have not included a revised Exhibit 1 or an updated disk containing the rule filing.

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If you have any questions, please contact me at (202) 728-6903; e-mail:
kosha.dalal@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Kosha K. Dalal
Assistant General Counsel

Enclosures

cc: Robert Love