

December 7, 1998

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549  
Mail Stop 10-1

Re: File No. SR-NASD-98-91 - Amendment to Time Period for Filing Information  
Requests in Arbitration

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Jean I. Feeney, Office of General Counsel, NASD Regulation, Inc., at (202) 728-6959; e-mail FeeneyJ@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Joan C. Conley  
Secretary

Attachment

File No. SR-NASD-98-91  
Consists of 13 Pages

**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) under the Securities Exchange Act of 1934 (“Act”), NASD Regulation, Inc. (“NASD Regulation”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Rule 10321 of the National Association of Securities Dealers, Inc. (“NASD” or “Association”) to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**RULES OF THE ASSOCIATION**

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**10000. CODE OF ARBITRATION PROCEDURE**

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**10321. General Provisions Governing Pre-Hearing Proceedings**

(a) (No change)

**(b) Document Production and Information Exchange**

(1) Any party may serve a written request for information or documents (“information request”) upon another party [twenty (20) business] 45 calendar days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding

an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) - (4) (No change)

(c) - (e) (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 Regulation at its meeting on October 7, 1998, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market has 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 October 8, 1998. 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 amendments to NASD Rules without recourse to the membership for approval, and Section 1(a)(iv) of Article VII of the NASD By-Laws permits the NASD Board of Governors to prescribe rules for the required or voluntary arbitration of controversies between members and between members and customers or others without recourse to the membership for approval.

The NASD proposes to make the proposed rule change operative on January 11, 1999.

(b) Questions regarding this rule filing may be directed to Jean I. Feeney,

Assistant General Counsel, NASD Regulation, Inc., 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 proposed rule change is intended to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier, to coincide with the recently amended time period to file an Answer to the Statement of Claim.

In a previous rule filing approved by the Commission<sup>1</sup> and effective on March 16, 1998, NASD Regulation enlarged the time to answer an arbitration claim from 20 business days to 45 calendar days, and eliminated extensions of time to answer except in extraordinary circumstances. That change was proposed because requests for extensions of time were common, generally because respondents needed additional time to develop a complete answer to the claim. The extension of time to 45 days was designed to ease the administrative burden on NASD Regulation staff by eliminating the burden of processing and granting routine extensions of time.

NASD Regulation has determined that a related change is necessary to the rule on discovery in arbitration, Rule 10321, which currently permits requests for documents and information to be made 20 business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The 20-day period was originally intended to coincide with the time to answer claims, in order to prevent the respondent from having to respond to a discovery request before it had

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<sup>1</sup> Exchange Act. Rel. No. 39664 (Feb. 13, 1998) (File No. SR-NASD-98-07); 63 F.R. 8727 (Feb. 20, 1998).

prepared its answer. Since the time to answer has been extended to 45 days, however, Rule 10321 could require a party to respond to a document request in 20 business days (approximately a month), which would be over two weeks before the party's answer was due. Therefore, to maintain the original purpose of the discovery time period, NASD Regulation proposes that the time period in Rule 10321 be extended to 45 calendar days as well.

(b) Statutory Basis

NASD Regulation 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. The NASD believes that the proposed rule change will protect investors and the public interest by facilitating a more orderly discovery procedure for all parties.

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

NASD Regulation 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 Regulation 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)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (e)(6) of Rule 19b-4 thereunder, 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. In accordance with Rule 19b-4, the 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. The NASD proposes to make the proposed rule change operative on January 11, 1999.

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

NASD REGULATION, INC.

BY: \_\_\_\_\_  
Joan C. Conley, Secretary

Date: December 7, 1998

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-98-91)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of  
Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the  
Time Period for Filing Information Requests in Arbitration

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), 15 U.S.C. 78s(b)(1), notice is hereby given that on , the National Association of Securities Dealers, Inc., through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), 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 Regulation. NASD Regulation has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (e)(6) of Rule 19b-4 under the Act,<sup>1</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.

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

NASD Regulation is proposing to amend Rule 10321 of the National Association of Securities Dealers, Inc. (“NASD” or “Association”), to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier. Below is the text of the proposed rule change. Proposed new

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<sup>1</sup> 17 CFR § 240.19b-4(e)(6).

language is in italics; proposed deletions are in brackets.

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## **RULES OF THE ASSOCIATION**

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### **10000. CODE OF ARBITRATION PROCEDURE**

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#### **10321. General Provisions Governing Pre-Hearing Proceedings**

(a) (No change)

##### **(b) Document Production and Information Exchange**

(1) Any party may serve a written request for information or documents (“information request”) upon another party [twenty (20) business] 45 calendar days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) - (4) (No change)

(c) - (e) (No change)

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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 Regulation 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 Regulation 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

The proposed rule change is intended to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier, to coincide with the recently amended time period to file an Answer to the Statement of Claim.

In a previous rule filing approved by the Commission<sup>2</sup> and effective on March 16, 1998, NASD Regulation enlarged the time to answer an arbitration claim from 20 business days to 45 calendar days, and eliminated extensions of time to answer except in extraordinary circumstances. That change was proposed because requests for extensions of time were common, generally because respondents needed additional time to develop a complete answer to the claim. The extension of time to 45 days was designed to ease the administrative burden on NASD Regulation staff by eliminating the burden of processing and granting routine extensions of time.

NASD Regulation has determined that a related change is necessary to the rule on discovery in arbitration, Rule 10321, which currently permits requests for documents and information to be made 20 business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The 20-

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<sup>2</sup> Exchange Act. Rel. No. 39664 (Feb. 13, 1998) (File No. SR-NASD-98-07); 63 F.R. 8727 (Feb. 20, 1998).

day period was originally intended to coincide with the time to answer claims, in order to prevent the respondent from having to respond to a discovery request before it had prepared its answer. Since the time to answer has been extended to 45 days, however, Rule 10321 could require a party to respond to a document request in 20 business days (approximately a month), which would be over two weeks before the party's answer was due. Therefore, to maintain the original purpose of the discovery time period, NASD Regulation proposes that the time period in Rule 10321 be extended to 45 calendar days as well.

(b) Statutory Basis

NASD Regulation 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. The NASD believes that the proposed rule change will protect investors and the public interest by facilitating a more orderly discovery procedure for all parties.

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

NASD Regulation 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 proposed rule change has been filed by the Association as a “non-controversial” rule change under Rule 19b-4(e)(6) under the Act.<sup>3</sup> Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until January 11, 1999, more than 30 days from December 7, 1998, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. 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

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<sup>3</sup>

17 CFR § 240.19b-4(e)(6)

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