

April 13, 1999

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-99-19 Amendments to IM-10100 to Facilitate Use of Non-SRO
Arbitration Forums

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,

Alden S. Adkins
Senior Vice President and
General Counsel

Attachment

File No. SR-NASD-99-19
Consists of 19 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

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”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Code of Arbitration Procedure to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

RULES OF THE ASSOCIATION

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10000. CODE OF ARBITRATION PROCEDURE

10100. ADMINISTRATIVE PROVISIONS

IM-10100. Failure to Act Under Provisions of Code of Arbitration Procedure

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) fail to submit a dispute for arbitration under the NASD Code of Arbitration Procedure as required by that Code;
- (b) fail to comply with any injunctive order issued pursuant to Rule 10335;
- (c) fail to appear or to produce any document in his possession or control as directed

pursuant to provisions of the NASD Code of Arbitration Procedure;

(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 the National Association of Securities Dealers, Inc., 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 [securities] 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 the National Association of Securities Dealers, Inc.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

Action by members requiring associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure shall constitute conduct that is inconsistent with just and equitable principles of trade and a violation of Rule 2110.

* * *

(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 March 24, 1999, and by the NASD Board of Governors at its meeting on March 25, 1999, 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. No other action by the NASD is necessary for the filing of the proposed rule change. Article VII, Section 1(a)(ii) of the NASD By-Laws permits the NASD Board of Governors to adopt Rules and amendments to NASD Rules without recourse to the membership for approval.

The NASD proposes to make the proposed rule change operative on May 17, 1999.

(b) Questions regarding this rule filing may be directed to Jean I. Feeney, Office of 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 facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations, and to ensure that NASD Regulation may take disciplinary action for the failure of a member or associated person to

comply with an award obtained pursuant to the rules and procedures of such dispute resolution programs.

Background

In the NASD Code of Arbitration Procedure, IM-10100 provides that it shall be a violation of Rule 2110¹ for a member or a person associated with a member to fail to honor an award or comply with a written and executed settlement agreement obtained in connection with an arbitration at various self-regulatory organizations (SROs) or the American Arbitration Association (AAA), an organization that is not affiliated with the securities industry.

Prior to 1991, the interpretive material now numbered IM-10100 provided only that it was a violation of NASD rules for members and associated persons to fail to honor awards rendered pursuant to the NASD's Code of Arbitration Procedure. The interpretive material was amended in 1991 to include awards issued in arbitration forums sponsored by the other SROs and the AAA. The amendment was intended to encompass awards rendered pursuant to the Uniform Code of Arbitration utilized by all members of the Securities Industry Conference on Arbitration (SICA)², or pursuant to the rules applicable to the arbitration of securities disputes before the AAA, which some broker/dealers had begun to offer to their

¹ Rule 2110 provides as follows: "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

² SICA is a group composed of representatives of the self-regulatory organizations that provide arbitration forums, public investors, and the securities industry. Staff of the SEC participate as non-voting invitees.

customers as an alternative forum.

In recent years, many alternative dispute resolutions forums have been created and achieved some popularity. Under the sponsorship of SICA, several member broker/dealers are now considering a voluntary pilot program in which they will arbitrate to completion, during a two-year period, a specified number of cases at one of several dispute resolution forums that are not sponsored by the SROs. Under this pilot program, the firms will designate to SICA one or more alternative forums that meet certain due process standards, and will agree to arbitrate all eligible cases at a designated non-SRO forum at their customers' election. Firms may not selectively choose which of their cases will be tried before a non-SRO forum. Cases eligible for the SICA program are customer-initiated cases in which the customer is represented by counsel.³

SICA developed the pilot program partly in response to a petition by an organization of attorneys who represent investors, the Public Investors Arbitration Bar Association (PIABA). PIABA had petitioned the SEC to require NASD Regulation to establish the AAA as an alternative forum for all customer arbitrations. Such a requirement would supersede any contrary forum selection clauses in arbitration agreements between members and their customers. The SEC referred the petition to SICA and NASD Regulation for consideration.

In the pilot program, the participating non-SRO forums will send copies of all awards to the SRO where the claim either was filed or would have been filed absent the pilot

³ The pilot program will not be available for disputes involving employment-related or member to member cases, class actions, partnership investments, claims for transactions that occurred more than four years before the pilot program began, or claims in which a respondent firm or associated person has not agreed to participate in the pilot program.

program. Parties are required by the program's guidelines to pay all awards within 30 days of receipt unless a motion to vacate is filed.

While NASD Regulation believes that use of the SICA pilot program does not require a rule change, since it is entirely voluntary and a matter of contract between firms and their customers, NASD Regulation is concerned that there might be some difficulty in bringing disciplinary action for any noncompliance with an award issued by a forum that is not listed in IM-10100. Therefore, NASD Regulation proposes to amend IM-10100 to add language clarifying that failure to comply with awards issued by any dispute resolution forum could be grounds for disciplinary action.

In connection with the above change, NASD Regulation also recommends deletion of the word "securities" in paragraph (d) of IM-10100, which currently refers to awards obtained "pursuant to the rules applicable to the arbitration of securities disputes" at a non-SRO forum. This change is recommended for two reasons. First, most non-SRO dispute resolution forums do not have separate rules for securities arbitration. Second, the change will also accommodate another emerging trend in which firms are contracting with outside dispute resolution forums to resolve disputes between the firms and their employees. Such disputes would be arbitrated according to employment or commercial rules of the dispute resolution forum, rather than the securities rules. NASD Regulation believes that the use of a non-SRO forum should not allow members or associated persons to circumvent the NASD's rules requiring them to comply with arbitration awards. Therefore, more inclusive language is proposed.

Description of Proposed Amendments

IM-10100, paragraph (d), currently provides that it shall be a violation of Rule 2110 for a member or associated person to 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 the listed SROs or “pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association where timely motion has not been made to vacate or modify such award pursuant to applicable law.” NASD Regulation proposes to delete the word “securities” from paragraph (d), and to add the phrase “or other dispute resolution forum selected by the parties” after “American Arbitration Association.” This will have the effect of bringing under the coverage of the interpretive material an award or settlement agreement obtained pursuant to the arbitration rules of any dispute resolution forum to which the parties have agreed to submit their dispute. It also will no longer restrict the application of IM-10100 to disputes decided under the securities rules of the non-SRO dispute resolution forum, but will apply as well to the employment arbitration rules or general commercial rules of the dispute resolution forum, if applicable to the dispute.

(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. NASD Regulation believes that the proposed rule change

will protect investors and the public interest by ensuring that members and associated persons have a duty to comply with awards obtained in non-SRO forums.

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 at least 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 May 17, 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: _____
Alden S. Adkins, Senior Vice President and
General Counsel

Date: April 13, 1999

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-99-19)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Use of Non-SRO Arbitration Forums

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. (“NASD” or “Association”), 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,¹ 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 the Code of Arbitration Procedure to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations. Below is the text of the proposed rule change. Proposed new language is in

¹ 17 CFR § 240.19b-4(e)(6).

italics; proposed deletions are in brackets.

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RULES OF THE ASSOCIATION

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- (b) fail to comply with any injunctive order issued pursuant to Rule 10335;
- (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the NASD Code of Arbitration Procedure;
- (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 the National Association of Securities Dealers, Inc., 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 [securities] 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 the National Association of Securities Dealers, Inc.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

Action by members requiring associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure shall constitute conduct that is inconsistent with just and equitable principles of trade and a violation of Rule 2110.

* * *

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 facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations, and to ensure that NASD Regulation may take disciplinary action for the failure of a member or associated person to comply with an award obtained pursuant to the rules and procedures of such dispute resolution programs.

Background

In the NASD Code of Arbitration Procedure, IM-10100 provides that it shall be a violation of Rule 2110² for a member or a person associated with a member to fail to honor an award or comply with a written and executed settlement agreement obtained in connection with an arbitration at various self-regulatory organizations (SROs) or the American Arbitration Association (AAA), an organization that is not affiliated with the securities industry.

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Conference on Arbitration (SICA)³, or pursuant to the rules applicable to the arbitration of securities disputes before the AAA, which some broker/dealers had begun to offer to their customers as an alternative forum.

In recent years, many alternative dispute resolutions forums have been created and achieved some popularity. Under the sponsorship of SICA, several member broker/dealers are now considering a voluntary pilot program in which they will arbitrate to completion, during a two-year period, a specified number of cases at one of several dispute resolution forums that are not sponsored by the SROs. Under this pilot program, the firms will designate to SICA one or more alternative forums that meet certain due process standards, and will agree to arbitrate all eligible cases at a designated non-SRO forum at their customers' election. Firms may not selectively choose which of their cases will be tried before a non-SRO forum. Cases eligible for the SICA program are customer-initiated cases in which the customer is represented by counsel.⁴

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⁴ The pilot program will not be available for disputes involving employment-related or member to member cases, class actions, partnership investments, claims for transactions that occurred more than four years before the pilot program began, or claims in which a respondent firm or associated person has not agreed to participate in the pilot program.

any contrary forum selection clauses in arbitration agreements between members and their customers. The SEC referred the petition to SICA and NASD Regulation for consideration.

In the pilot program the participating non-SRO forums will send copies of all awards to the SRO where the claim either was filed or would have been filed absent the pilot program. Parties are required by the program's guidelines to pay all awards within 30 days of receipt unless a motion to vacate is filed.

While NASD Regulation believes that use of the SICA pilot program does not require a rule change, since it is entirely voluntary and a matter of contract between firms and their customers, NASD Regulation is concerned that there might be some difficulty in bringing disciplinary action for any noncompliance with an award issued by a forum that is not listed in IM-10100. Therefore, NASD Regulation proposes to amend IM-10100 to add language clarifying that failure to comply with awards issued by any dispute resolution forum could be grounds for disciplinary action.

In connection with the above change, NASD Regulation also recommends deletion of the word "securities" in paragraph (d) of IM-10100, which currently refers to awards obtained "pursuant to the rules applicable to the arbitration of securities disputes" at a non-SRO forum. This change is recommended for two reasons. First, most non-SRO dispute resolution forums do not have separate rules for securities arbitration. Second, the change will also accommodate another emerging trend in which firms are contracting with outside dispute resolution forums to resolve disputes between the firms and their employees. Such disputes would be arbitrated according to employment or commercial rules of the dispute resolution forum, rather than the securities rules. NASD Regulation believes that the use of a

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(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. NASD Regulation believes that the proposed rule change will protect investors and the public interest by ensuring that members and associated persons have a duty to comply with awards obtained in non-SRO forums.

(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.⁵ 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 May 17, 1999, more than 30 days from **[date of filing]**, the date on which it was filed, and NASD Regulation 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

⁵17 CFR § 240.19b-4(e)(6).

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 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