

May 30, 2002

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-2002-70—Proposed Amendments to NASD Rules
Regarding Replacement Hearing Officers' Authority to Participate in Hearing
Panel Decisions**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find 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 James S. Wrona, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8270; e-mail jim.wrona@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Patrice M. Gliniecki
Vice President
and Deputy General Counsel

Enclosures

File No. SR-NASD-2002-70
Consists of 18 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) of 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 NASD Rules 9231 and 9233 to clarify a replacement Hearing Officer’s authority when he or she is appointed after a hearing has begun or been concluded. Below is the text of the proposed rule change. Proposed new language is underlined.

* * * *

**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended
Hearing Panel or Replacement Hearing Officer**

(a) No Change

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) through (2) No Change

(c) through (d) No Change

(e) Appointment of Replacement Hearing Officer

In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a

replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:

(1) Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 9268; or

(2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

* * *

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

(a) Recusal, Withdrawal of Hearing Officer

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall

appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).

(b) through (c) 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 March 13, 2002, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution 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 March 14, 2002. 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 James S. Wrona, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8270.

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

(a) Purpose

The proposed amendments clarify a replacement Hearing Officer's authority when he or she is appointed after a hearing has begun or been concluded. For various reasons, Hearing Officers are sometimes unable to finish hearings and participate in the issuance of decisions. NASD Procedural Rule 9233 provides that the Chief Hearing Officer shall appoint a replacement Hearing Officer. The rule does not, however, delineate the replacement Hearing Officer's powers when he or she is appointed after a hearing has begun or been concluded. The proposed amendments to Rules 9231 and 9233 clarify a replacement Hearing Officer's authority in such situations.¹

In part, the proposed amendments respond to an ambiguity in the current rules that was highlighted by the National Adjudicatory Council's ("NAC") recent decision in *U.S. Rica Financial, Inc.*, Complaint No. C01000003 (NAC Oct. 26, 2001). In that case, the Hearing Officer designated as a member of the Hearing Panel left the NASD after the record in the matter had closed but before a decision had been issued. A replacement Hearing Officer was then appointed, and the decision was issued. The decision made clear that the replacement Hearing Officer had not taken part in the decision, which reflected the determinations of the remaining two members of the Hearing Panel. On appeal, the NAC remanded the matter for a rehearing based on the current rules' ambiguity in such a situation.

The proposed amendments would allow, in appropriate cases, the remaining Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation

of the replacement Hearing Officer in the decision. In that scenario, the replacement Hearing Officer may advise the Hearing Panelists regarding legal issues and prepare and sign the decision on behalf of the Hearing Panel.² The amendments, however, also would allow the replacement Hearing Officer the discretion to participate in the resolution of the issues in the case and in the issuance of the decision if he or she certifies familiarity with the record.³ In exercising this power, the replacement Hearing Officer could recall any witness before the Hearing Panel.⁴ The proposed amendments would provide a replacement Hearing Officer with

¹ NASD Regulation notes that the Chief Hearing Officer will promptly notify the parties of the appointment of the replacement Hearing Officer. In general, the parties also should be provided an opportunity to comment on the manner in which the matter should proceed.

² Industry representatives have always had a central role in bringing their securities industry expertise to bear on the NASD's disciplinary process. The NASD procedural rules recognize that role by providing that industry representatives shall constitute a majority of each hearing panel. The current amendments also recognize that central role by making clear that, under paragraph (e)(1) of Rule 9231, the remaining Hearing Panel members may, in appropriate circumstances, decide the case and issue the decision with the assistance of the replacement Hearing Officer regarding legal issues and drafting of the decision.

³ To certify familiarity with the record, the replacement Hearing Officer must read and consider all relevant portions of the record. NASD Regulation anticipates that, in most cases, certification will be made by written order signed by the replacement Hearing Officer (although certification could be made by written correspondence or oral representation transcribed by a court reporter).

⁴ If the replacement Hearing Officer determines to proceed under paragraph (e)(2) of Rule 9231, he or she normally should afford the parties an opportunity to suggest which, if any, witnesses they believe should be recalled. Although the decision to recall witnesses is left to the sound discretion of the replacement Hearing Officer, if the replacement Hearing Officer determines not to recall any witnesses, he or she must have sufficient confidence in the existing record to be able to resolve the case on a fair and reasoned basis.

NASD Regulation recognizes that a witness who is recalled might be unavailable or, if available, might change his or her previous testimony. These potential complications, however, are not unique to the proposed amendments, and hearing panels and courts have a long tradition of dealing with these types of situations. If the replacement Hearing Officer who proceeds under Rule 9231(e)(2) directs that a witness who testified at the hearing be recalled, the party who sponsored the witness will be responsible for producing the witness or establishing that the witness is unavailable. If the party fails to do so, the Hearing Panel may disregard the prior testimony. Where a witness is shown to be unavailable, the replacement Hearing Officer would have to rely on the transcripts of the witness's testimony. Where an available witness is recalled but testifies differently during the subsequent hearing, the parties may impeach the witness with his or her prior inconsistent statement(s). The trier

discretion, and thus flexibility, to deal with various situations. That discretion, of course, is not unfettered, as the NAC and the Commission could reverse a replacement Hearing Officer determination based on an abuse of discretion.⁵

(b) Statutory Basis

The proposed rule change is consistent with the provisions of Sections 15A(b)(6) and (8) of the Act. Section 15A(b)(6) of the Act 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. Section 15A(b)(8) states, in pertinent part, that the Association's rules must provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change clarifies NASD Procedural Rules 9231 and 9233 with regard to a replacement Hearing Officer's authority to participate in a Hearing Panel's decision. Under the current rules, when a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service, the Chief Hearing Officer appoints a replacement Hearing Officer under Rule 9233. That rule, however, presently does not describe the powers of a replacement Hearing Officer who is appointed after a hearing has begun or been concluded. By clarifying

of fact would then take those inconsistencies into account when determining how much weight, if any, to give to the witness's testimony.

⁵ For example, depending on the facts and circumstances of the particular case, a replacement Hearing Officer who proceeds under Rule 9231(e)(2) likely would abuse his or her discretion by refusing to recall a witness whose testimony he or she had not heard where such testimony is material and disputed and where the witness is available to testify without undue burden. Conversely, a replacement Hearing Officer likely would not abuse his or her discretion by relying on evidence heard by a predecessor Hearing Officer when the particular testimony is undisputed or immaterial or when a witness has become unavailable.

replacement Hearing Officers' powers in such situations, the proposed amendments promote the fair and efficient resolution of disciplinary cases and thus furthers the purposes of the Act.

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

Not applicable.

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 (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. In accordance with Rule 19b-4(f)(6)(iii), NASD Regulation submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change prior to the date of filing. In that notice of intent, NASD Regulation requested 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), as consistent with the protection of investors and the public

interest.⁶ The Commission agreed to waive that requirement. Therefore, the proposed rule change is both effective and operative upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

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

Not applicable.

9. Exhibits

A completed notice of proposed rule change for publication in the Federal Register is attached as Exhibit 1.

NASD REGULATION, INC.

BY: _____
Patrice M. Gliniecki,
Vice President and Deputy General Counsel

Date: (May 30, 2002)

⁶ Waiver of the 30-day requirement is in the public interest, as it ensures that disciplinary proceedings are not needlessly delayed during such an interim period. In order to fulfill its statutory duties, NASD Regulation must be able to respond quickly and obtain fair but prompt redress when it suspects that a member firm or associated person has violated the securities laws or the NASD rules. The ambiguity created by the current rules and interpretations thereof may lead some adjudicators to order re-hearings where such action would not add any appreciable value to the decision-making process. Such re-hearings would, however, create unnecessary expenses and delays for the parties, and could have the unintended consequence of allowing respondents to engage in continuing wrongs.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- [leave space] ; File No. SR-NASD-2002-70)
[leave space for date]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Regarding Replacement Hearing Officers' Authority to Participate in Hearing Panel Decisions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 30, 2002, 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 (f)(6) of Rule 19b-4 under the Act,³ 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 NASD Procedural Rules 9231 and 9233 to clarify a replacement Hearing Officer's authority when he or she is appointed after a hearing

¹ 15 U.S.C. §78s(b)(1).

² 17 CFR §240.19b-4.

³ 17 CFR §240.19b-4(f)(6).

has begun or been concluded. Below is the text of the proposed rule change. Proposed new language is underlined.

* * *

**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended
Hearing Panel or Replacement Hearing Officer**

(a) No Change

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) through (2) No Change

(c) through (d) No Change

(e) Appointment of Replacement Hearing Officer

In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:

(1) Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding

legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 9268; or

(2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

* * *

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

(a) Recusal, Withdrawal of Hearing Officer

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).

(b) through (c) 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 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

(1) Purpose

The proposed amendments clarify a replacement Hearing Officer's authority when he or she is appointed after a hearing has begun or been concluded. For various reasons, Hearing Officers are sometimes unable to finish hearings and participate in the issuance of decisions. NASD Code of Procedure Rule 9233 provides that the Chief Hearing Officer shall appoint a replacement Hearing Officer. The rule does not, however, delineate the replacement Hearing Officer's powers when he or she is appointed after a hearing has begun or been concluded. The proposed amendments to Rules 9231 and 9233 clarify a replacement Hearing Officer's authority in such situations.⁴

⁴ NASD Regulation notes that the Chief Hearing Officer will promptly notify the parties of the appointment of the replacement Hearing Officer. In general, the parties also should be provided an opportunity to comment on the manner in which the matter should proceed.

In part, the proposed amendments respond to an ambiguity in the current rules that was highlighted by the National Adjudicatory Council's ("NAC") recent decision in *U.S. Rica Financial, Inc.*, Complaint No. C01000003 (NAC Oct. 26, 2001). In that case, the Hearing Officer designated as a member of the Hearing Panel left the NASD after the record in the matter had closed but before a decision had been issued. A replacement Hearing Officer was then appointed, and the decision was issued. The decision made clear that the replacement Hearing Officer had not taken part in the decision, which reflected the determinations of the remaining two members of the Hearing Panel. On appeal, the NAC remanded the matter for a rehearing based on the current rules' ambiguity in such a situation.

The proposed amendments would allow, in appropriate cases, the remaining Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. In that scenario, the replacement Hearing Officer may advise the Hearing Panelists regarding legal issues and prepare and sign the decision on behalf of the Hearing Panel.⁵ The amendments, however, also would allow the replacement Hearing Officer the discretion to participate in the resolution of the issues in the case and in the issuance of the decision if he or she certifies familiarity with the record.⁶ In

⁵ Industry representatives have always had a central role in bringing their securities industry expertise to bear on the NASD's disciplinary process. The NASD procedural rules recognize that role by providing that industry representatives shall constitute a majority of each hearing panel. The current amendments also recognize that central role by making clear that, under paragraph (e)(1) of Rule 9231, the remaining Hearing Panel members may, in appropriate circumstances, decide the case and issue the decision with the assistance of the replacement Hearing Officer regarding legal issues and drafting of the decision.

⁶ To certify familiarity with the record, the replacement Hearing Officer must read and consider all relevant portions of the record. NASD Regulation anticipates that, in most cases, certification will

exercising this power, the replacement Hearing Officer could recall any witness before the Hearing Panel.⁷ The proposed amendments would provide a replacement Hearing Officer with discretion, and thus flexibility, to deal with various situations. That discretion, of course, is not unfettered, as the NAC and the Commission could reverse a replacement Hearing Officer determination based on an abuse of discretion.⁸

be made by written order signed by the replacement Hearing Officer (although certification could be made by written correspondence or oral representation transcribed by a court reporter).

⁷ If the replacement Hearing Officer determines to proceed under paragraph (e)(2) of Rule 9231, he or she normally should afford the parties an opportunity to suggest which, if any, witnesses they believe should be recalled. Although the decision to recall witnesses is left to the sound discretion of the replacement Hearing Officer, if the replacement Hearing Officer determines not to recall any witnesses, he or she must have sufficient confidence in the existing record to be able to resolve the case on a fair and reasoned basis.

NASD Regulation recognizes that a witness who is recalled might be unavailable or, if available, might change his or her previous testimony. These potential complications, however, are not unique to the proposed amendments, and hearing panels and courts have a long tradition of dealing with these types of situations. If the replacement Hearing Officer who proceeds under Rule 9231(e)(2) directs that a witness who testified at the hearing be recalled, the party who sponsored the witness will be responsible for producing the witness or establishing that the witness is unavailable. If the party fails to do so, the Hearing Panel may disregard the prior testimony. Where a witness is shown to be unavailable, the replacement Hearing Officer would have to rely on the transcripts of the witness's testimony. Where an available witness is recalled but testifies differently during the subsequent hearing, the parties may impeach the witness with his or her prior inconsistent statement(s). The trier of fact would then take those inconsistencies into account when determining how much weight, if any, to give to the witness's testimony.

⁸ For example, depending on the facts and circumstances of the particular case, a replacement Hearing Officer who proceeds under Rule 9231(e)(2) likely would abuse his or her discretion by refusing to recall a witness whose testimony he or she had not heard where such testimony is material and disputed and where the witness is available to testify without undue burden. Conversely, a replacement Hearing Officer likely would not abuse his or her discretion by relying on evidence heard by a predecessor Hearing Officer when the particular testimony is undisputed or immaterial or when a witness has become unavailable.

(2) Statutory Basis

The proposed rule change is consistent with the provisions of Sections 15A(b)(6) and (8) of the Act. Section 15A(b)(6) of the Act 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. Section 15A(b)(8) states, in pertinent part, that the Association's rules must provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change clarifies NASD Procedural Rules 9231 and 9233 with regard to a replacement Hearing Officer's authority to participate in a Hearing Panel's decision. Under the current rules, when a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service, the Chief Hearing Officer appoints a replacement Hearing Officer under Rule 9233. That rule, however, presently does not describe the powers of a replacement Hearing Officer who is appointed after a hearing has begun or been concluded. By clarifying replacement Hearing Officers' powers in such situations, the proposed amendments promote the fair and efficient resolution of disciplinary cases and thus further the purposes of the Act.

(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(f)(6) under the Act.⁹ In accordance with Rule 19b-4(f)(6)(iii), prior to the filing date, NASD Regulation submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change. In that notice of intent, NASD Regulation requested 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 consistent with the protection of investors and the public interest.¹⁰ The Commission agreed to waive that requirement. Accordingly, the proposed rule change will become both effective and operative upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(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

⁹ 17 CFR § 240.19b-4(f)(6)

¹⁰ Waiver of the 30-day requirement is in the public interest, as it ensures that disciplinary proceedings are not needlessly delayed during such an interim period. In order to fulfill its statutory duties, NASD Regulation must be able to respond quickly and obtain fair but prompt redress when it suspects that a member firm or associated person has violated the securities laws or the NASD rules. The ambiguity created by the current rules and interpretations thereof may lead some adjudicators to order re-hearings where such action would not add any appreciable value to the decision-making process. Such re-hearings would, however, create unnecessary expenses and delays for the parties, and could have the unintended consequence of allowing respondents to engage in continuing wrongs.

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