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May 12, 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-2004-039 – Reducing the Time for Chairperson Selection  
Amendment No. 1**

Dear Ms. England:

Pursuant to conversations with Division of Market Regulation staff, NASD is filing this letter as Amendment No. 1 (“Amendment”) to the above-numbered rule filing. NASD is enclosing a 3-1/2" disk containing the amended Exhibit 1 (“Exhibit”) in Microsoft Word 7.0 to facilitate production of the Federal Register release.

This Amendment changes the number of days that parties will have to select a chairperson and establishes a specific timeframe for extensions. First, at the suggestion of Division of Market Regulation staff, NASD proposes to reduce from 15 to 7 days (rather than to 5 days, as originally proposed) the time that parties will have to select a chairperson. As a result, the time allotted for chairperson selection in Rule 10308(c)(5) will be reduced from 15 days to 7 days after the Director of Arbitration sends notice of the arbitrators to the parties. Moreover, NASD will clarify that, in cases where parties must respond to Dispute Resolution by mail, the computer system that tracks the parties’ responses adds two days to the response deadline to account for mailing time, and calculates the date their response is due.

Second, the Market Regulation staff suggested that NASD establish a specific timeframe for extensions given to the parties who are negotiating, but indicate they need more time to select a chairperson. Thus, if the parties notify Dispute Resolution staff prior to the expiration of the original deadline that they cannot select a chairperson within the allotted timeframe but wish to continue trying to reach an agreement, NASD proposes to extend the time to select a chairperson for an additional 8 days. NASD believes this proposed rule change will ensure that the rule is uniformly applied to all parties requesting an extension.

The following changes should be made to Rule 10308(c)(5) on page 2 of the rule filing, and pages 7 and 8 of the Exhibit (new language is underlined; deletions are bracketed):

10308. Selection of Arbitrators

\* \* \*

(c) Striking, Ranking, and Appointing Arbitrators on Lists

\* \* \*

(5) Selecting a Chairperson for the Panel

The parties shall have [15] 7 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties notify Dispute Resolution staff prior to the expiration of the original deadline that they need more time in which to reach an agreement, Dispute Resolution staff will extend the time to select a chairperson for an additional 8 days. If the parties cannot agree within the allotted time, the Director shall appoint a chairperson from the panel as follows:

(Remainder of rule unchanged.)

\* \* \*

NASD has changed the text of the rule filing and Exhibit, where applicable, to reflect changes made by this Amendment. The following changes should be made to the first paragraph under Section 3, Statement of Purpose, on page 3 of the rule filing (new language is underlined; deletions are bracketed):

NASD Dispute Resolution proposes to reduce the time allotted for chairperson selection in Rule 10308(c)(5) of the Code from 15 days to [five] 7 days after the Director of Arbitration sends notice of the arbitrators to the parties.

The following changes should be made to Section II (A) of the Exhibit on page 8 (new language is underlined; deletions are bracketed):

NASD Dispute Resolution proposes to reduce the time allotted for chairperson selection in Rule 10308(c)(5) of the Code from 15 days to [five] 7 days after the Director of Arbitration sends notice of the arbitrators to the parties.

Finally, the following changes should be made to the fourth sentence of the first full paragraph on page 4 of the rule filing and to the fourth sentence of the first paragraph under Section II (A)(a) on page 8 of the Exhibit (new language is underlined; deletions are bracketed):

NASD proposes to reduce the chairperson selection period from 15 days to [five] 7 days.<sup>1</sup> The 15-day waiting period causes unnecessary delay in the selection process since Dispute Resolution staff estimates that parties fail to agree on a chairperson in nearly 80 percent of the cases.<sup>[1]</sup> (Footnote moved to preceding sentence.)

If you have any questions, I can be reached at (202) 728-8151 or by email at Mignon.McLemore@NASD.com.

Very truly yours,

Mignon McLemore

Enclosures

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<sup>1</sup> In cases where [When] parties must respond to Dispute Resolution by mail, a computer system, which tracks the parties' responses, adds two days [normally are added] to the response deadline to account for mailing time, and calculates the date their response is due. Parties then [will] receive a letter [that will] specifying the date their response is due, based on system calculations.

Revised Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2004-039)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Reducing the Time for Chairperson Selection

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 on , National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“Dispute Resolution”) 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 Dispute Resolution. 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 Dispute Resolution is proposing to amend NASD Rule 10308 of the NASD Code of Arbitration Procedure (“Code”) to reduce the time allotted the parties for chairperson selection. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \*

**10308. Selection of Arbitrators**

\* \* \*

**(c) Striking, Ranking, and Appointing Arbitrators on Lists**

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

\* \* \*

**(5) Selecting a Chairperson for the Panel**

The parties shall have [15] 7 days from the date the Director sends notice of the names of the arbitrators to select a chairperson. If the parties notify Dispute Resolution staff prior to the expiration of the original deadline that they need more time in which to reach agreement, Dispute Resolution staff will extend the time to select a chairperson for an additional 8 days. If the parties cannot agree within the allotted time, the Director shall appoint a chairperson from the panel as follows:

(Remainder of rule unchanged.)

\* \* \*

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

NASD Dispute Resolution proposes to reduce the time allotted for chairperson selection in Rule 10308(c)(5) of the Code from 15 days to 7 days after the Director of Arbitration sends notice of the arbitrators to the parties.

**(a) Purpose**

Rule 10308 sets forth the procedures for how arbitrators and chairpersons are selected for an arbitration panel. First, the arbitrators are selected for the panel and then, from this list, the parties must appoint a chairperson within a 15-day timeframe. Currently, Rule 10308(c)(5) states, in relevant part, that “the parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to select a chairperson.” NASD proposes to reduce the chairperson selection period from 15 days to 7 days.<sup>3</sup> The 15-day waiting period causes unnecessary delay in the selection process since Dispute Resolution staff estimates that parties fail to agree on a chairperson in nearly 80 percent of the cases. If the parties notify staff that they are negotiating to select a chairperson, but are unable to conclude the process within the allotted timeframe, staff will grant extensions to facilitate the negotiations.

NASD monitors continuously the claim filing process to determine how it can be improved and streamlined. In light of the failure of the parties to agree on a chairperson in nearly 80 percent of the cases and the added delay caused by the 15-day waiting period, NASD believes that the claim filing process would become more efficient if the time required to complete an arbitration panel were reduced. NASD believes that this proposal should provide sufficient time for the parties to reach agreement on a chairperson, if they wish to, and will allow the Initial Prehearing Conference to be scheduled more expeditiously. Further, the proposed rule change would expedite the processing of arbitrations by reducing the turnaround time for chairperson selection.

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<sup>3</sup> In cases where parties must respond to Dispute Resolution by mail, the computer system that tracks the parties’ responses adds two days to the response deadline to account for mailing time, and calculates the date their response is due. Parties then receive a letter specifying the date their response is due, based on system calculations.

(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 reducing the time it takes to select a chairperson will help streamline the arbitration process and ultimately make the process more efficient.

(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.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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