

March 31, 2003

Florence Harmon
Senior Special Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2003-64 – Extension of Pilot Rule in IM-10100(f) and (g) of the Code of Arbitration Procedure to Require Industry Parties in Arbitration to Waive Application of Contested California Arbitrator Disclosure Standards, upon the Request of Customers or Associated Persons with Claims of Statutory Employment Discrimination; Immediate Effectiveness Requested

Dear Ms. Harmon:

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 Jean I. Feeney, Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959; e-mail jean.feeney@nasd.com. The fax number is (202) 728-8833.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2003-64
Consists of 13 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) is filing with the Securities and Exchange Commission (SEC or Commission) a proposed rule change to extend the pilot rule in IM-10100, paragraphs (f) and (g), of the NASD Code of Arbitration Procedure (Code) to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards,¹ upon the request of customers or, in industry cases, of associated persons with claims of statutory employment discrimination, for an additional six-month pilot period. This extension does not affect existing rule text.

* * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD on a mail vote of its Executive Committee on March 24, 2003, which authorized the filing of the rule change with the SEC. 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 NASD Rules without recourse to the membership for approval. Section 4(a) of Article IX of the NASD By-Laws permits the NASD Board to appoint an Executive Committee to exercise all the powers and authority of the Board in the management of the

¹ California Rules of Court, Division VI of the Appendix, entitled, “Ethics Standards for Neutral Arbitrators in Contractual Arbitration” (the “California Standards”).

business and affairs of the NASD between meetings of the Board. NASD requests that the rule change become effective on filing and that it become operative on March 31, 2003, for an additional six-month pilot period.

(b) Questions regarding this rule filing may be directed to Jean I. Feeney, Vice President and Chief Counsel, NASD Dispute Resolution, 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 extends for an additional six months a pilot rule that was approved by the Commission for a six-month period ending March 30, 2003. Exchange Act Release No. 46562 (September 26, 2002) (File No. SR-NASD-2002-126), 67 Federal Register 62085 (October 3, 2002). NASD's statement of purpose is contained in the Commission's Approval Order. In that Approval Order, at footnote 9, the Commission stated:

If the outcome of the lawsuit is that the California Standards do not apply to NASD arbitration, waivers would no longer be necessary. Cases in which arbitrators were appointed pursuant to waivers would continue to their conclusion. If the lawsuit has not concluded at the expiration of the six-month pilot period, NASD may request an extension.

The litigation discussed in the Approval Order has not concluded, and NASD now is a party to additional litigation relating to application of the California Standards. Accordingly, NASD is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to NASD

arbitration). NASD requests that the pilot be extended for six months beginning on March 31, 2003.

In addition, NASD has made one change to its model waiver agreement. In light of questions raised by practitioners, the first sentence of the waiver agreement has been amended to delete reference to federal or state laws other than the California Standards. NASD proposes to begin using the amended waiver agreement upon the operative date of the pilot extension for all cases in which none of the parties has yet signed the prior NASD waiver agreement. This change will not affect any parties that already have signed the prior NASD waiver agreement, or any cases in which some of the parties have signed the prior NASD waiver agreement. If any party in an ongoing case has signed the prior NASD waiver agreement, then all other parties will use the same agreement.

(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 expediting the appointment of arbitrators under the waiver, at the request of customers and associated persons with claims of statutory employment discrimination, will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

4. 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.

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 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 (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. NASD requests the Commission to waive the five-day advance notice requirement and the requirement that the rule change not become operative for 30 days after filing. NASD staff has discussed the substance of the proposed rule change with Commission staff in advance of filing. NASD proposes to make the proposed rule change operative on March 31, 2003.

NASD believes that this action is necessary for the protection of investors to continue to resolve the backlog created by confusion over the new California Standards, and that immediate

effectiveness will avoid disruption in the arbitrations of parties who wish to pursue their cases in arbitration under the NASD Code of Arbitration Procedure.

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.
2. Sample waiver agreement.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: March 31, 2003

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2003-64)

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to extend for an additional six-month period a pilot rule to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers and associated persons with claims of statutory employment discrimination

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 , the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD 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 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 is proposing to extend the pilot rule in IM-10100, paragraphs (f) and (g), to require industry parties in arbitration to waive application of contested California

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240. 19b-4

³ 17 CFR 240. 19b-4(f)(6)

arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for a six-month pilot period.

* * *

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

(a) Purpose

The proposed rule change extends for an additional six months a pilot rule that was approved by the Commission for a six-month period ending March 30, 2003. Exchange Act Release No. 46562 (September 26, 2002) (File No. SR-NASD-2002-126), 67 Federal Register 62085 (October 3, 2002). NASD's statement of purpose is contained in the Commission's Approval Order. In that Approval Order, at footnote 9, the Commission stated:

If the outcome of the lawsuit is that the California Standards do not apply to NASD arbitration, waivers would no longer be necessary. Cases in which arbitrators were

appointed pursuant to waivers would continue to their conclusion. If the lawsuit has not concluded at the expiration of the six-month pilot period, NASD may request an extension.

The litigation discussed in the Approval Order has not concluded, and NASD now is a party to additional litigation relating to application of the California Standards.

Accordingly, NASD is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to NASD arbitration). NASD requests that the pilot be extended for six months beginning on March 31, 2003.

In addition, NASD has made one change to its model waiver agreement. In light of questions raised by practitioners, the first sentence of the waiver agreement has been amended to delete reference to federal or state laws other than the California Standards. NASD proposes to begin using the amended waiver agreement upon the operative date of the pilot extension for all cases in which none of the parties has yet signed the prior NASD waiver agreement. This change will not affect any parties that already have signed the prior NASD waiver agreement, or any cases in which some of the parties have signed the prior NASD waiver agreement. If any party in an ongoing case has signed the prior NASD waiver agreement, then all other parties will use the same agreement.

(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 expediting the appointment of arbitrators under the waiver, at the request of customers (and, in industry cases, associated persons with claims of statutory employment discrimination), will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

(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

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. Consequently, because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition; and because the Commission has waived the 5-day and 30-day time periods of Rule 19b-4(f)(6), it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

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].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary

WAIVER AGREEMENT

The undersigned parties hereby agree that this arbitration shall be governed by the NASD Code of Arbitration Procedure and the Federal Arbitration Act. In particular, the parties agree that the provisions of the NASD Code of Arbitration Procedure, specifically including its arbitrator disclosure requirements, arbitrator selection procedures, and arbitrator disqualification provisions, and not any provisions of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration in California ("California Standards"), will apply in this arbitration. The California Standards shall have no application whatsoever to any aspect of this arbitration, including without limitation any proceedings to obtain judicial review or judicial enforcement of any arbitration award that may be entered in this arbitration.

The parties accept the disclosures required under the NASD Code of Arbitration Procedure as fully sufficient for purposes of this case, notwithstanding the fact that such disclosures may be less extensive than those required by the California Standards in cases to which those Standards apply. The parties further accept that the NASD Code of Arbitration Procedure's disqualification procedures vest the ultimate authority in the Director of Arbitration to determine whether to disqualify an arbitrator, whereas the California Standards purport to eliminate the Director of Arbitration's discretion in determining whether to disqualify arbitrators. In recognition of these, and other, variances between the NASD Code of Arbitration Procedure and the California Standards, the parties hereby expressly waive any and all rights, obligations, and/or benefits that might be conferred on them by the California Standards in this arbitration, expressly agree that they will not seek to enforce any rights or claim any remedies under or pursuant to the California Standards in any court, proceeding or forum in any matter relating to this arbitration, and expressly and irrevocably release any claim or claims that they may have based on the California Standards in connection with this arbitration or any proceedings relating thereto.

In addition, and without limiting in any way the scope of the waiver and release set forth in the foregoing paragraph, the parties specifically agree not to assert, in any forum, that non-compliance with the California Standards is a basis for challenging the validity of any arbitrator or of any arbitration award, whether asserted during the arbitration proceeding or after an arbitration award has been issued. The parties also specifically agree not to seek any relief against NASD Dispute Resolution or NASD, or any arbitrator, for any failure to comply with the Standards.

The parties understand and acknowledge that this waiver and release applies to and includes all unknown or unsuspected consequences or results arising from or relating to the parties' waiver of any and all rights under the California Standards in connection with this arbitration. The parties represent and warrant that they have read the contents of California Civil Code section 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected this settlement with the debtor.”

**THE PARTIES EXPRESSLY WAIVE ANY AND ALL RIGHTS AND BENEFITS
UNDER CALIFORNIA CIVIL CODE SECTION 1542.**

The parties hereby agree that this agreement may be signed in counterparts.

Date:_____

Date:_____

Claimant(s):

Respondent(s): (Print here)

Claimant (print name and sign above)

Counsel for Respondent

Claimant (print name and sign above)

Counsel for Respondent

Claimant (print name and sign above)

Counsel for Respondent

Counsel for Claimant
(add signature lines if additional space needed)