

March 22, 2001

Florence Harmon, Esq.
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-01-21 – Amendments to NASD Code of Arbitration Procedure to
Modify Certain Provisions Relating to the Assessment and Payment of Fees

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 to facilitate production of the Federal Register release.

If you have any questions, please contact Laura Leedy Gansler, Counsel, NASD Dispute Resolution, Inc., at (202) 728-8275; e-mail laura.gansler@nasd.com. The fax number of NASD Dispute Resolution, Inc. is (202) 728-8833.

Very truly yours,

Joan C. Conley
Senior Vice President
and Corporate Secretary

Enclosures

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 Dispute Resolution, Inc. (“NASD Dispute Resolution”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Code of Arbitration Procedure (“Code”) to simplify or clarify several fee-related provisions of the Code. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

10306. Settlements

[All settlements upon any matter shall be at the election of the parties.]

(a) Parties to an arbitration may agree to settle their dispute at any time.

(b) The terms of a settlement agreement do not need to be disclosed to the Association.

However, the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions. If the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.

* * *

10319. Adjournments

(a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) [Unless waived by the Director of Arbitration upon a showing of financial need,] If an adjournment requested by a party is granted after arbitrators have been appointed, the [a] party requesting the adjournment [after arbitrators have been appointed shall deposit with the request for an adjournment,] shall pay a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed [\$1,000] \$1,500 for a second or subsequent adjournment requested by that party. [If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.] The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall allocate the fees among the requesting parties.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

* * *

10328. Amendments

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in

Rule 10314(b). The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 10314(b).

(b) If a new or amended pleading increases the amount in dispute, all filing fees, hearing session deposits, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.

(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

* * *

(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 Dispute Resolution at its meeting on December 6, 2000, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Resolution, Inc. 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 December 7, 2000. 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.

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to Laura Leedy Gansler, Counsel, NASD Dispute Resolution, at (202) 728-8275.

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

(a) Purpose

NASD Dispute Resolution has identified several provisions of the Code relating to the assessment or payment of fees that have generated confusion for the staff and parties, or otherwise require simplification or clarification. The general purpose of the proposed rule change is to clarify or simplify these provisions. The proposed amendment to Rule 10319 would also harmonize the rule with recent changes to other parts of the Code.

Settlement Default for the Allocation of Forum Fees

Rule 10306 of the Code provides that parties to arbitrations may settle their dispute at any time. The terms of any settlement agreement need not be disclosed. However, settling parties remain responsible for payment of outstanding fees, including fees for previously held hearing sessions. NASD Dispute Resolution encourages parties to agree on how any outstanding fees shall be divided among the parties as part of the settlement agreement. Unfortunately, this often does not happen.

When the parties fail to allocate fees in settlements, the staff must present this issue to the arbitrator(s) for resolution. This is a time-consuming process that is an unnecessary burden to the arbitrator(s), and can result in surprises to the parties. To eliminate any ambiguity in this area, the proposed rule change would amend Rule 10306 to provide that if settling parties fail to agree on the allocation of outstanding fees, the fees will be divided equally among all parties by default.

Adjournment Fees

The proposed rule change would modify the timing of the payment of adjournment fees. Rule 10319 of the Code currently requires parties requesting adjournment of an arbitration hearing to deposit a fee at the time the adjournment is requested. If the adjournment is not granted, the deposit is returned; if it is granted, the arbitrators may return the deposit in their discretion.

The proposed rule change would minimize the burden this rule places on parties, arbitrators, and staff by providing that payment of the adjournment fee is required only if an adjournment is granted, rather than requiring a deposit of fees when a request for adjournment is made. This would eliminate the need for parties to deposit funds that may be returned to them, as well as the need for the staff to track the deposits and issue refunds if necessary. It would also help to expedite the resolution of adjournment requests.

The proposed rule change would also address a technical imperfection in the current adjournment fee rule. The current rule provides that, for initial adjournment requests, the fee is equal to the amount of the initial hearing session fee; for second or subsequent adjournment requests, the amount is twice the initial hearing session fee, but not more than \$1,000. The intent of this portion of the current rule is to discourage repeat adjournments, by having second and

subsequent adjournments cost substantially more than the first adjournment. When the NASD's new fee schedule went into effect in March 1999, hearing session fees were generally increased.¹ For several claim categories, the hearing session fee now exceeds \$1,000, meaning that the rule as presently written can result in a *lower* fee for second and subsequent adjournments. To address this anomaly, the proposed rule change would increase the current \$1,000 cap to \$1,500.

Recalculating Fees When Amount in Dispute is Amended

Finally, the proposed rule change would amend Rule 10328 of the Code, governing amendments to pleadings, to clarify that when a claim is amended to increase the amount in dispute, NASD Dispute Resolution will recalculate filing fees, hearing session deposits, process fees, and surcharges based on the new, increased claim. This will prevent parties from avoiding higher filing fees and surcharges by initially claiming an artificially low amount in dispute in their statement of claim.

(b) Statutory Basis

NASD Dispute Resolution 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 Dispute Resolution believes that the proposed rule change will protect investors and the general public by simplifying and clarifying various fee-related provisions of the Code.

¹ Exchange Act Release No. 34-41056 (February 16, 1999) (File No. SR-NASD-97-79); 64 Fed. Reg. 10041 (March 1, 1999).

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

NASD Dispute Resolution 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 Dispute Resolution 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)

Not applicable.

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

NASD DISPUTE RESOLUTION, INC.

BY: _____
Joan C. Conley, Senior Vice President and
Corporate Secretary

Date: March 22, 2001

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD- 01-21)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Fee Structure of the Code of Arbitration Procedure

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 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 the Code of Arbitration of Procedure (“Code”) to clarify or simplify several fee-related provisions of the Code. Proposed new language is in italics; proposed deletions are in brackets.

* * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

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10328. Amendments

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(b) If a new or amended pleading increases the amount in dispute, all filing fees, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.

(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

* * *

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 Dispute Resolution 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 Dispute Resolution 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

NASD Dispute Resolution has identified several provisions of the Code relating to the assessment or payment of fees that have generated confusion for the staff and parties, or otherwise require simplification or clarification. The general purpose of the proposed rule change is to clarify or simplify these provisions. The proposed amendment to Rule 10319 would also harmonize the rule with recent changes to other parts of the Code.

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The proposed rule change would also address a technical imperfection in the current adjournment fee rule. The current rule provides that, for initial adjournment requests, the fee is equal to the amount of the initial hearing session fee; for second or subsequent adjournment requests, the amount is twice the initial hearing session fee, but not more than \$1,000. The intent of this portion of the current rule is to discourage repeat adjournments, by having second and subsequent adjournments cost substantially more than the first adjournment. When the NASD's

new fee schedule went into effect in March 1999, hearing session fees were generally increased.³

For several claim categories, the hearing session fee now exceeds \$1,000, meaning that the rule as presently written can result in a *lower* fee for second and subsequent adjournments. To address this anomaly, the proposed rule change would increase the current \$1,000 cap to \$1,500.

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Finally, the proposed rule change would amend Rule 10328 of the Code, governing amendments to pleadings, to clarify that when a claim is amended to increase the amount in dispute, NASD Dispute Resolution will recalculate filing fees, hearing session deposits, surcharges, and process fees based on the new, increased claim. This will prevent parties from avoiding higher filing fees and surcharges by initially claiming an artificially low amount in dispute in their statement of claim.

(b) Statutory Basis

NASD Dispute Resolution 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 Dispute Resolution believes that the proposed rule change will protect investors and the general public by simplifying and clarifying various fee-related provisions of the Code.

³ Exchange Act Release No. 34-41056 (February 16, 1999) (File No. SR-NASD-97-79); 64 Fed. Reg. 10041 (March 1, 1999).

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

NASD Dispute Resolution 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