



November 2, 2000

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-00-65 - Proposed Amendments to Rule 10334 (Large and Complex Case Rule) to Accelerate Expiration of the Rule from August 1, 2002 to December 31, 2000 – Immediate Effectiveness Requested.

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 to facilitate production of the Federal Register release.

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

Very truly yours,

Joan C. Conley
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-00-65
Consists of 17 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 Dispute Resolution, Inc. (“NASD Dispute Resolution”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to: (1) amend NASD Rule 10334 of the Code of Arbitration Procedure (“Code”) to accelerate the expiration date of the rule from August 1, 2002 to December 31, 2000; (2) to delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334; and (3) renumber Rules 10205 and 10332 accordingly. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

10334. Procedures for Large and Complex Cases

(a) through (g) Unchanged.

(h) Temporary Effectiveness

This Rule shall remain in effect until [August 1, 2002] December 31, 2000, unless modified or extended prior thereto by the Board of Governors.

* * *

10205. Schedule of Fees for Industry and Clearing Controversies

(a) through (h) Unchanged.

[(i) If an eligible matter is submitted for arbitration as large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.]

[(j)] (i) Schedule of Fees

(Remainder unchanged.)

* * *

10332. Schedule of Fees for Customer Disputes

[(h) If an eligible matter is submitted for arbitration as a large and complex case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.]

[(i)] h Schedule of Fees

* * *

(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 October 4, 2000, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market and NASD Regulation, Inc. had 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 October 5, 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 implementation date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission notice of the effective date of the proposed rule change. The implementation date will be December 31, 2000.

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

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

(a) Purpose

Rule 10334 of the Code establishes certain optional procedures for handling and managing large and complex ("LAC") cases, defined as those involving claims of \$1 million or more. Specifically, the rule provides for an administrative conference at the outset of the case, a

preliminary hearing before an arbitrator to resolve discovery and other disputes, and the opportunity for parties to select arbitrators through preferential rankings. Use of the rule results in higher filing fees and deposits for claimants than proceeding under the general provisions of the Code.

The rule was adopted for a one-year pilot period in 1995. At that time, the procedures established by the rule were not available in other arbitration cases. In 1997, the NASD amended the rule to make certain of its provisions, which had been mandatory, voluntary. At the same time, the NASD extended the rule for five years to provide enough time to determine whether parties would use the rule more frequently as amended. In its rule filing, the NASD noted that few parties were electing to proceed under the rule. Parties elected to proceed under the rule in only 43 of the 880 cases from May 2, 1995 until January 28, 1997 that were eligible for treatment under the rule. The few parties who did elect to proceed under the rule apparently did so to take advantage of the availability of a list selection procedure for the appointment of arbitrators. The NASD found that parties were deterred from using the rule by the higher fees it required. Since then, changes to the Code and to NASD Dispute Resolution practices have extended the most important of the procedures established by Rule 10334 to all cases, including the selection of arbitrators through preferential rankings. The benefits of the administrative conference and the preliminary hearing are available through the Initial Pre-hearing Conference that is now held in almost all cases. Moreover, the discovery process has been significantly enhanced with the recent adoption of the Discovery Guide.

As a result of these changes, use of the rule has decreased significantly from its already low 1997 level. Through July 31st 2000, parties have elected to proceed to the administrative conference

phase of the LAC process in only 4 out of 366 eligible cases; in 1999, parties did so in only 6 out of 679 cases. More significantly, in none of these cases did the parties elect to proceed under Rule 10334 past the administrative conference stage to a hearing on the merits. While some of these cases may have settled, it is also probable that once the parties understood that the benefits of the rule are available under the Code without the higher fees required under the rule, they elected not to continue to proceed under the rule. Whatever the reason, no case has gone past the administrative conference stage of Rule 10334 procedures since 1997.

Even though it is rarely used, the rule requires staff training and resource allocation. It can also be a source of confusion for parties, who may not realize that they can now obtain the principal benefits of the LAC case program without paying the higher fees required under the rule.

Therefore, given the lack of use of Rule 10334, and the fact that the primary benefits of the rule are available under general Code procedures at less cost to parties, NASD Dispute Resolution believes that additional time is not needed to determine that the rule should be sunset. Therefore, the proposed rule change would amend the rule to accelerate its expiration date from its current date of August 1, 2002 to December 31, 2000.

The proposed rule change would also delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies, and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334, and renumber Rules 10205 and 10332 accordingly.

(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 accelerating the expiration date of Rule 10334 will serve the public interest by eliminating an unnecessary, redundant Code provision that confuses parties, often costs them more, and requires needless expenditure of NASD Dispute Resolution resources.

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 Immediate 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; does not impose any significant burden on competition; and does not become operative for 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 December 31, 2000.

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: November 2, 2000

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- **[leave space]** ; File No. SR-NASD-00- 65)

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Rule 10334 of the NASD 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR § 240.19b-

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF
SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Dispute Resolution is proposing to: (1) amend Rule 10334 of the Association's Code of Arbitration Procedure to accelerate the expiration date of the Rule from August 1, 2002 to December 31, 2000; (2) to delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334; and (3) renumber Rules 10205 and 10332 accordingly. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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(Remainder unchanged.)

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~~[(i)]~~ h Schedule of Fees

(Remainder 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 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

Rule 10334 of the Code establishes certain optional procedures for handling and managing large and complex (“LAC”) cases, defined as those involving claims of \$1 million or more. Specifically, the rule provides for an administrative conference at the outset of the case, a preliminary hearing before an arbitrator to resolve discovery and other disputes, and the opportunity for parties to select arbitrators through preferential rankings. Use of the rule results in higher filing fees and deposits for claimants than proceeding under the general provisions of the Code.

The rule was adopted for a one-year pilot period in 1995. At that time, the procedures established by the rule were not available in other arbitration cases. In 1997, the NASD amended the rule to make certain of its provisions, which had been mandatory, voluntary. At the same time, the NASD extended the rule for five years to provide enough time to determine whether parties would use the rule more frequently as amended. In its rule filing, the NASD noted that few parties were electing to proceed under the rule. Parties elected to proceed under the rule in only 43 of the 880 cases from May 2, 1995 until January 28, 1997 that were eligible for treatment under the rule. The few parties who did elect to proceed under the rule apparently did so to take advantage of the availability of a list selection procedure for the appointment of arbitrators. The NASD found that parties were deterred from using the rule by the higher fees it required.

Since then, changes to the Code and to NASD Dispute Resolution practices have extended the most important of the procedures established by Rule 10334 to all cases, including the selection

of arbitrators through preferential rankings. The benefits of the administrative conference and the preliminary hearing are available through the Initial Pre-hearing Conference that is now held in almost all cases. Moreover, the discovery process has been significantly enhanced with the recent adoption of the Discovery Guide.

As a result of these changes, use of the rule has decreased significantly from its already low 1997 level. Through July 31st of this year, parties have elected to proceed to the administrative conference phase of the LAC process in only 4 out of 366 eligible cases; in 1999, parties did so in only 6 out of 679 cases. More significantly, in none of these cases did the parties elect to proceed under Rule 10334 past the administrative conference stage to discovery, arbitrator selection, and the hearing on the merits. While some of these cases may have settled, it is also probable that once the parties understood that the benefits of the rule are available under the Code without the higher fees required under the rule, they elected not to continue to proceed under the rule. Whatever the reason, no case has gone past the administrative conference stage of Rule 10334 procedures since 1997.

Even though it is rarely used, the rule requires staff training and resource allocation. It can also be a source of confusion for parties, who may not realize that they can now obtain the principal benefits of the LAC case program without paying the higher fees required under the rule.

Therefore, given the lack of use of Rule 10334, and the fact that the primary benefits of the rule are available under general Code procedures at less cost to parties, NASD Dispute Resolution believes that additional time is not needed to determine that the rule should be sunset. Therefore,

the proposed rule change would amend the rule to accelerate its expiration date to December 31, 2000.

The proposed rule change would also delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334, and renumber Rules 10205 and 10332 accordingly.

(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 accelerating the expiration date of Rule 10334 will serve the public interest by eliminating an unnecessary, redundant Code provision that confuses parties and results in needless expenditure of NASD Dispute Resolution resources.

(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

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.⁴ 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 December 31, 2000, more than 30 days from November 2, 2000, the date on which it was filed, and the NASD 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 effective 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 public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act 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

⁴ 17 CFR § 240.19b-4(f)(6)

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 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