October 27, 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-2004-164 - Random Selection of Arbitrators by the Neutral List
        Selection System; Accelerated Effectiveness Requested**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a
3-l/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 Mignon McLemore, Counsel, NASD Dispute
Resolution, Inc., at (202) 728-8151; e-mail Mignon.McLemore@nasd.com. The fax number is
(202) 728-8833.

                            Very truly yours,

                            Barbara Z. Sweeney
                            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) of 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 Rule 10308 of the NASD Code of Arbitration Procedure

("Code") to change the method used by the Neutral List Selection System to select arbitrators

from rotational to random, as proposed in the pending Customer and Industry Code revisions.[1]

Below is the text of the proposed rule change. Proposed new language is underlined; proposed

deletions are in brackets.

* * *

10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public
arbitrator.

    (a) Unchanged.

    (b) Composition of Arbitration Panel; Preparation of Lists for Mailing to Parties

        (1) – (3) Unchanged.

        (4) Preparation of Lists

            (A)   Except as provided in subparagraph (B) below, the Neutral List
            Selection System shall generate the lists of public and non-public arbitrators on a

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[1]   NASD Dispute Resolution has filed with the SEC a proposed rule change to the Code to reorganize the current
rules, simplify the language, codify current practices, and implement several substantive changes. The rule filing
was submitted in three parts: Customer Code, Industry Code, and Mediation Code. The Customer Code was filed
on October 15, 2003 (SR-NASD-2003-158); the Industry Code was filed on January 16, 2004, and amended on
February 26, 2004 (SR-NASD-2004-011). The provision modifying how NLSS selects arbitrators is the same in the
proposed Customer and Industry revisions. The Mediation Code was filed on January 23, 2004 (SR-NASD-2004-
013). It does not contain any provisions concerning the Neutral List Selection System. The three new codes will
replace the current Code in its entirety. The Code revision is undergoing SEC staff review and has not yet been
published for comment.

[rotating] <u>random</u> basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest identified within the Neutral List Selection System database.

> (B) Unchanged.

(5) – (6) Unchanged.

(c) – (f) Unchanged.

* * *

(b)   Not applicable.

(c)   Not applicable.

2.   <u>Procedures of the Self-Regulatory Organization</u>

(a) The proposed rule change was approved by the Board of Directors of NASD Dispute Resolution at its meeting on April 23, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Regulation 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 NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on April 24, 2003. No other action by 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 proposed rule change will become effective upon Commission approval. However, it will not become operational until the third quarter of 2005. Upon Commission approval, NASD programmers will begin developing the software to adapt the random selection function to the MATRICS[2] Computer Project ("MATRICS"), a new computer system being designed and created for NASD Dispute Resolution, which will replace its two case management systems.

During this time, the Neutral List Selection System ("NLSS")[3] will continue to generate lists of

arbitrators on a rotational basis. Once the software has been developed, it will be added to the

arbitrator selection function of MATRICS, which NASD is scheduled to complete in the third

quarter of 2005. After the random selection function has been added to MATRICS, arbitrator

lists can be generated using random selection. At that point, the proposed rule change can

become operational and NASD will announce the effective date in a Notice to Members, which

will be published no later than 30 days prior to the time when the random selection function of

MATRICS will become operational.

(b) Questions regarding this rule filing may be directed to Mignon McLemore, Counsel,

NASD Dispute Resolution, at (202) 728-8151.

3. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the</u>

<u>Proposed Rule Change</u>

(a) Purpose

NASD Dispute Resolution is upgrading its computer technology, in what is known as

MATRICS, which will replace its two case management systems: CRAFTIS[4] and NLSS. NASD

will implement MATRICS in a series of releases, in which various functions from CRAFTIS and

NLSS will be adapted and programmed to operate within MATRICS.[5] NASD has determined

that the NLSS components of MATRICS are ready to be developed. Most functions of NLSS

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[2] MATRICS stands for Mediation and Arbitration Tracking and Retrieval Interactive Case System.

[3] NLSS stands for the Neutral List Selection System, which is the computer program NASD uses to select arbitrators on a rotational basis. It has been in use since November 1998.

[4] CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration function. It uses an old technology platform and is not Web-based.

[5] A new component for MATRICS, the Web-based arbitration claim filing system, has already been developed and became effective on August 5, 2004. Parties may access the online system at http://www.nasdadr.com/online_filing.asp. The SEC approved the final version of the system on June 16, 2004. See Securities Exchange Act Rel. No. 34-49876 (June 16, 2004), 69 FR 35090 (June 23, 2004).

will be transferred to MATRICS. However, NASD has determined that MATRICS should select

arbitrators on a random basis, instead of a rotational basis, like NLSS currently does.

NASD is proposing to switch from rotational to random for several reasons. First, other

self-regulatory organizations, governmental entities, and private alternative dispute organizations

select panels for their arbitration cases by generating a random list of arbitrators. For example,

the New York Stock Exchange (NYSE)[6] and the Society of Maritime Arbitrators[7] offer to the

parties a random list selection procedure to select panels to decide claims in their respective

arbitration forums. The California Department of Industrial Relations,[8] the Federal Mediation

and Conciliation Service,[9] and the Federal Emergency Management Agency[10] also use random

list selection. Some state courts that provide alternative dispute resolution services also use

random list selection to choose arbitrators for their hearings.[11]

Second, in order for a rotational system to operate effectively and efficiently, a large

amount of computer code is required to manage and maintain the arbitrator rotation. A rotational

selection system works best if the data that the system uses to generate the lists remain static.

However, the data input into NLSS changes frequently. For example, in the last two years,

NASD Dispute Resolution has added eight hearing locations, and, in that time, has added

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[6] The NYSE filed with the SEC for immediate effectiveness, a request to extend its pilot program, the Voluntary Supplemental Procedures for Selecting Arbitrators ("Voluntary Procedures"), which allows parties to, among other things, select arbitrators using the Random List Selection method. NYSE has also filed a proposal with the SEC to make a variation of the Voluntary Procedures permanent. See Information Memo Number 04-36 (July 6, 2004).

[7] Society of Maritime Arbitrators, Inc., Recreational and Small Commercial Vessel Salvage Arbitration (visited Sept. 29, 2004) <http://www.smany.org/sma/salvrule.html>.

[8] California Department of Industrial Relations, State Mediation and Conciliation Services, *How to Request an Arbitration List* (visited Sept. 1, 2004) <http://www.dir.ca.gov/csmcs/HowToRequestPanel.html>.

[9] Federal Mediation and Conciliation Service, *Arbitration FAQs* (visited Sept. 1, 2004) <http://www.fmcs.gov/internet/faq.asp?catergoryID=133>.

[10] Federal Emergency Management Agency, *Arbitration Guidelines For The Cerro Grande Fires* (visited Sept. 1, 2004) <http://www.fema.gov/cerrogrande/arbitration/guide.shtm>.
[11] See, e.g., U.S. Bankruptcy Court for the Middle District of Tenn. (ADR Program); Minn. Rule 5530.0900; and Nevada Arbitration Rule 6.

approximately 1,000 new arbitrators to the database. Once these changes to the data are input

into NLSS, the rotational system attempts to incorporate them when it generates new lists. Any

attempt to modify the computer code to accommodate these changes is time-consuming and

costly. Also, maintaining a selection system that is purely rotational is cumbersome, because

additional code is needed to track the histories of each selection to ensure that all arbitrators have

an equal opportunity to appear in the rotation, which directly affects list selection.

Third, NASD Dispute Resolution believes that implementing a random selection system

eliminates the misperception that the arbitrator selection process can be manipulated. In the past,

there have been complaints that some arbitrators appear routinely on consecutive lists, while

other arbitrators rarely appear on any lists. Given that the goal of rotational selection is to ensure

that all arbitrators have an equal opportunity to appear on a list, these unusual list appearances

may make parties feel that the system is being manipulated. However, rotational selection does

not guarantee that an arbitrator will be placed on a list of arbitrators or that an arbitrator is

limited to a certain number of list appearances. In a rotational system like NLSS, the system

generates a set of arbitrators from those who are next in the rotation, but selects for the list to be

sent to parties, only those arbitrators from that set who meet the various selection criteria.

Last, NASD understands that, under a random selection system, it is possible for a

particular arbitrator to be selected for consecutive lists more frequently than another arbitrator.

However, a statistical comparison of one arbitrator's selection to another, using a large sample of

eligible arbitrators and lists generated, should show that one arbitrator is not being selected for

lists more frequently than any other.[12]   While NASD acknowledges this anomaly in a random

selection system, NASD believes that the benefits of such a system, such as ease of design, cost-

efficient maintenance, and overall fairness of random selection (as well as the increased

perception of fairness) will strengthen the operation of the forum.

NASD Dispute Resolution believes that the proposed rule change ultimately will protect

investors and benefit the public by providing parties and arbitrators with an automated system,

MATRICS, which will help the forum operate more efficiently while maintaining the core goal

of providing arbitrators who have an equal probability of being listed for service on any given

list of proposed arbitrators. In an effort to sustain the progress made on the MATRICS upgrades,

NASD proposes to amend Rule 10308(b)(4) with a delayed implementation date, so that the

developers can program this component for MATRICS using the random selection method of

generating arbitrator lists in order to be ready when this phase of MATRICS becomes

operational. NASD is, therefore, requesting accelerated review and approval for this proposed

rule change to allow the programmers to begin creating the code, so that they will remain on

development schedule while the Commission is reviewing the Code revisions.[13] According to the

technology development plan, NASD is scheduled to complete the arbitrator selection function

of MATRICS in the third quarter of 2005. For the developers to meet this goal, NASD must

amend the rule now to introduce the concept of random selection in order to provide the

developers with the lead-time necessary to create the software and implement it on the

MATRICS platform.[14] While the software is being created, NLSS will continue to generate lists

of arbitrators on a rotating basis. Subject to Commission approval of this rule, NASD will

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[12] In fact, the same comparative analysis conducted under a rotational method should yield a statistically similar result.

[13] The proposed Customer Code and Industry Code revisions, which have already been filed with the SEC, contain a random selection provision. See note 1 above.

[14] The alternative would result in duplicative effort and wasted resources, because programmers would have to develop and program MATRICS to select arbitrators under the current rules, and then discard that programming and create new software once the Code revision has been approved.

upgrade MATRICS with the random selection function, phase out NLSS, and replace it with

MATRICS.

(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 Dispute

Resolution believes that the proposed rule change ultimately will protect investors and benefit

the public by providing parties with an automated system that will help the forum operate more

efficiently.

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)

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the <u>Federal Register</u>. NASD believes that good cause exists to accelerate approval of the proposed rule change, because NASD Dispute Resolution has reached a critical stage in the upgrade of its computer technology platform. One of the most significant aspects of MATRICS will be its ability to generate lists of arbitrators. NASD Dispute Resolution believes that developing and programming a random selection function for MATRICS is the most significant component in this process because it will lay the foundation for future NLSS functions that are adapted for MATRICS. Therefore, as future releases are contingent upon the successful implementation of the random selection function, NASD Dispute Resolution believes that accelerated review and approval will allow the upgrades to continue as scheduled. Moreover, NASD Dispute Resolution believes that the proposed rule change ultimately will protect investors and benefit the public by providing parties with an automated case management system that will help the forum operate more efficiently.

Because NASD believes that the proposed rule change will protect investors and the public interest, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the <u>Federal</u> <u>Register</u>.

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

Not applicable.

9.   <u>Exhibits</u>

1.   Completed notice of proposed rule change for publication in the <u>Federal</u> <u>Register</u>.

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 DISPUTE RESOLUTION, INC.

BY:_____

Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: October 27, 2004

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- _____; File No. SR-NASD-2004-164)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Random Selection of Arbitrators by the Neutral List Selection System

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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD Dispute Resolution is proposing to amend Rule 10308 of the NASD Code of Arbitration Procedure ("Code") to change the method used by the Neutral List Selection System to select arbitrators from rotational to random by incorporating the random selection provision of the proposed Customer and Industry Code revisions.[3] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   NASD Dispute Resolution has filed with the SEC a proposed rule change to the Code to reorganize the current rules, simplify the language, codify current practices, and implement several substantive changes. The rule filing was submitted in three parts: Customer Code, Industry Code, and Mediation Code. The Customer Code was filed on October 15, 2003 (SR-NASD-2003-158); the Industry Code was filed on January 16, 2004, and amended on

* * *

10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

(a) Unchanged.

(b) Composition of Arbitration Panel; Preparation of Lists for Mailing to Parties

(1) – (3) Unchanged.

(4) Preparation of Lists

(A)   Except as provided in subparagraph (B) below, the Neutral List Selection System shall generate the lists of public and non-public arbitrators on a [rotating] <u>random</u> basis within a designated geographic hearing site and shall exclude arbitrators based upon conflicts of interest identified within the Neutral List Selection System database.

(B) Unchanged.

(5) – (6) Unchanged.

(c) – (f) Unchanged.

* * *

II.   <u>SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE</u>

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)   <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

February 26, 2004 (SR-NASD-2004-011). The Mediation Code was filed on January 23, 2004 (SR-NASD-2004-013). It does not contain any discovery provisions. The three new codes will replace the current Code in its entirety. The Code revision is undergoing SEC staff review and has not yet been published for comment.

(a) **Purpose**

NASD Dispute Resolution is upgrading its computer technology, in what is known as

MATRICS, which will replace its two case management systems: CRAFTIS[4] and NLSS. NASD

will implement MATRICS in a series of releases, in which various functions from CRAFTIS and

NLSS will be adapted and programmed to operate within MATRICS.[5] NASD has determined

that the NLSS components of MATRICS are ready to be developed. Most functions of NLSS

will be transferred to MATRICS. However, NASD has determined that MATRICS should select

arbitrators on a random basis, instead of a rotational basis, like NLSS currently does.

NASD is proposing to switch from rotational to random for several reasons. First, other

self-regulatory organizations, governmental entities, and private alternative dispute organizations

select panels for their arbitration cases by generating a random list of arbitrators. For example,

the New York Stock Exchange (NYSE)[6] and the Society of Maritime Arbitrators[7] offer to the

parties a random list selection procedure to select panels to decide claims in their respective

arbitration forums. The California Department of Industrial Relations,[8] the Federal Mediation

and Conciliation Service,[9] and the Federal Emergency Management Agency[10] also use random

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[4] CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration function. It uses an old technology platform and is not Web-based.

[5] A new component for MATRICS, the Web-based arbitration claim filing system, has already been developed and became effective on August 5, 2004. Parties may access the online system at http://www.nasdadr.com/online_filing.asp. The SEC approved the final version of the system on June 16, 2004. See Securities Exchange Act Rel. No. 34-49876 (June 16, 2004), 69 FR 35090 (June 23, 2004).

[6] The NYSE filed with the SEC for immediate effectiveness, a request to extend its pilot program, the Voluntary Supplemental Procedures for Selecting Arbitrators ("Voluntary Procedures"), which allows parties to, among other things, select arbitrators using the Random List Selection method. NYSE has also filed a proposal with the SEC to make a variation of the Voluntary Procedures permanent. See Information Memo Number 04-36 (July 6, 2004).

[7] Society of Maritime Arbitrators, Inc., Recreational and Small Commercial Vessel Salvage Arbitration (visited Sept. 29, 2004) <http://www.smany.org/sma/salvrule.html>.

[8] California Department of Industrial Relations, State Mediation and Conciliation Services, *How to Request an Arbitration List* (visited Sept. 1, 2004) <http://www.dir.ca.gov/csmcs/HowToRequestPanel.html>.

[9] Federal Mediation and Conciliation Service, *Arbitration FAQs* (visited Sept. 1, 2004) <http://www.fmcs.gov/internet/faq.asp?catergoryID=133>.

list selection. Some state courts that provide alternative dispute resolution services also use

random list selection to choose arbitrators for their hearings.[11]

Second, in order for a rotational system to operate effectively and efficiently, a large

amount of computer code is required to manage and maintain the arbitrator rotation. A rotational

selection system works best if the data that the system uses to generate the lists remain static.

However, the data input into NLSS changes frequently. For example, in the last two years,

NASD Dispute Resolution has added eight hearing locations, and, in that time, has added

approximately 1,000 new arbitrators to the database. Once these changes to the data are input

into NLSS, the rotational system attempts to incorporate them when it generates new lists. Any

attempt to modify the computer code to accommodate these changes is time-consuming and

costly. Also, maintaining a selection system that is purely rotational is cumbersome, because

additional code is needed to track the histories of each selection to ensure that all arbitrators have

an equal opportunity to appear in the rotation, which directly affects list selection.

Third, NASD Dispute Resolution believes that implementing a random selection system

eliminates the misperception that the arbitrator selection process can be manipulated. In the past,

there have been complaints that some arbitrators appear routinely on consecutive lists, while

other arbitrators rarely appear on any lists. Given that the goal of rotational selection is to ensure

that all arbitrators have an equal opportunity to appear on a list, these unusual list appearances

may make parties feel that the system is being manipulated. However, rotational selection does

not guarantee that an arbitrator will be placed on a list of arbitrators or that an arbitrator is

limited to a certain number of list appearances. In a rotational system like NLSS, the system

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[10] Federal Emergency Management Agency, *Arbitration Guidelines For The Cerro Grande Fires* (visited Sept. 1, 2004) <http://www.fema.gov/cerrogrande/arbitration/guide.shtm>.

[11] See, e.g., U.S. Bankruptcy Court for the Middle District of Tenn. (ADR Program); Minn. Rule 5530.0900; and Nevada Arbitration Rule 6.

generates a set of arbitrators from those who are next in the rotation, but selects for the list to be sent to parties, only those arbitrators from that set who meet the various selection criteria.

Last, NASD understands that, under a random selection system, it is possible for a particular arbitrator to be selected for consecutive lists more frequently than another arbitrator. However, a statistical comparison of one arbitrator's selection to another, using a large sample of eligible arbitrators and lists generated, should show that one arbitrator is not being selected for lists more frequently than any other.[12] While NASD acknowledges this anomaly in a random selection system, NASD believes that the benefits of such a system, such as ease of design, cost-efficient maintenance, and overall fairness of random selection (as well as the increased perception of fairness) will strengthen the operation of the forum.

NASD Dispute Resolution believes that the proposed rule change ultimately will protect investors and benefit the public by providing parties and arbitrators with an automated system, MATRICS, which will help the forum operate more efficiently while maintaining the core goal of providing arbitrators who have an equal probability of being listed for service on any given list of proposed arbitrators. In an effort to sustain the progress made on the MATRICS upgrades, NASD proposes to amend Rule 10308(b)(4) with a delayed implementation date, so that the developers can program this component for MATRICS using the random selection method of generating arbitrator lists in order to be ready when this phase of MATRICS becomes operational. NASD is, therefore, requesting accelerated review and approval for this proposed rule change to allow the programmers to begin creating the code, so that they will remain on development schedule while the Commission is reviewing the Code revisions.[13] According to the

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[12] In fact, the same comparative analysis conducted under a rotational method should yield a statistically similar result.

[13] The proposed Customer Code and Industry Code revisions, which have already been filed with the SEC, contain a random selection provision. See note 1 above.

technology development plan, NASD is scheduled to complete the arbitrator selection function

of MATRICS in the third quarter of 2005. For the developers to meet this goal, NASD must

amend the rule now to introduce the concept of random selection in order to provide the

developers with the lead-time necessary to create the software and implement it on the

MATRICS platform.[14] While the software is being created, NLSS will continue to generate lists

of arbitrators on a rotating basis. Subject to Commission approval of this rule, NASD will

upgrade MATRICS with the random selection function, phase out NLSS, and replace it with

MATRICS.

(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 Dispute

Resolution believes that the proposed rule change ultimately will protect investors and benefit

the public by providing parties with an automated system that will help the forum operate more

efficiently.

(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.

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[14] The alternative would result in duplicative effort and wasted resources, because programmers would have to

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

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the publication of notice of filing thereof because NASD Dispute Resolution has reached a critical stage in the upgrade of its computer technology platform. One of the most significant aspects of MATRICS will be its ability to generate lists of arbitrators. The Commission agrees that developing and programming a random selection function for MATRICS is the most significant component in this process because it will lay the foundation for future NLSS functions that are adapted for MATRICS. Therefore, as future releases are contingent upon the successful implementation of the random selection function, the Commission agrees that accelerated review and approval will allow the upgrades to continue as scheduled. Moreover, the Commission believes that the proposed rule change ultimately will protect investors and benefit the public by providing parties with an automated case management system that will help the forum operate more efficiently.

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.

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develop and program MATRICS to select arbitrators under the current rules, and then discard that programming and

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

create new software once the Code revision has been approved.