

OMB APPROVAL

OMB Number: 3235-0045
 Expires: June 30, 2007
 Estimated average burden
 hours per response.....38

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SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No. SR - 2005 - 094

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒

Section 19(b)(3)(A) ☐

Section 19(b)(3)(B) ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐ Extension of Time Period
 for Commission Action ☐ Date Expires

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend Rule 10308 of the NASD Code of Arbitration Procedure relating to the classification of arbitrators.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

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

Date

By
 (Name)

Vice President and Chief Counsel
 NASD Dispute Resolution

(Title)

NOTE: Clicking the button at right will digitally sign and lock
 this form. A digital signature is as legally binding as a physical
 signature, and once signed, this form cannot be changed.

Jean Feeney, jean.feeney@nasd.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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”) relating to the classification of arbitrators.

Below is the text of the proposed rule change.¹ Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

10308. Selection of Arbitrators

(a) Definitions

(1) through (3) No change

(4) "non-public arbitrator"

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past 5 years, was:

(i) associated with or registered through a broker or a dealer

(including a government securities broker or dealer or a municipal securities dealer);

¹ The rules proposed in this filing will be renumbered as appropriate following Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes; see Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR-NASD-2003-158); and the NASD Code of Arbitration Procedure for Industry Disputes; see Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR-NASD-2004-011).

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) "public arbitrator"

(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(i) is not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more;

(iii) is not an investment adviser;

(iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); [and]

(v) is not employed by, and is not the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business;

(vi) is not a director or officer of, and is not the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; and

(vii) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) No change

(6) through (7) No change

(b) through (f) No change

* * * * *

(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 meetings on April 20 and July 20, 2005, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Regulatory Policy and Oversight 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 meetings on April 21 and July 21, 2005. 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.

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 no later than 30 days following publication of the Notice to Members announcing Commission approval.²

(b) Questions regarding this rule filing may be directed to John D. Nachmann, Counsel, NASD Dispute Resolution, at (202) 728-8273.

² If an arbitrator's classification changes solely because of an amendment to the definitions in Rule 10308, the arbitrator's classification will be changed prospectively, that is, for future appointments only. In ongoing cases, staff will notify the parties of the prospective change in the arbitrator's classification. In such situations, because the arbitrator's classification was correct when the arbitrator was appointed, NASD normally will not grant challenges for cause based on a prospective change in classification. This provides continuity and avoids unnecessary disruption to ongoing cases. Challenges for cause still may be made based upon the disqualification and removal criteria in Rules 10308(d) and 10312(d).

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

(a) Purpose

The purpose of the proposed rule change is to amend the arbitrator classification criteria in Rule 10308 of the Code to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations.

The Code classifies arbitrators as public or non-public. When investors have a dispute with member firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a panel consisting of either a single public arbitrator, or a majority public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.³

Under Rule 10308(a)(4) of the Code, a person is classified as a non-public arbitrator if he or she:

(A) is, or within the past 5 years, was:

- (i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
- (ii) registered under the Commodity Exchange Act;
- (iii) a member of a commodities exchange or a registered futures association; or
- (iv) associated with a person or firm registered under the Commodity Exchange Act;

³ The panel composition for intra-industry disputes (not involving any parties who are investors) is governed by Rule 10202. Depending on the nature of the dispute, intra-industry panels may consist of all public arbitrators, all non-public arbitrators, or a majority of public arbitrators. The arbitrator classification provisions of Rule 10308 apply to all such panels.

- (B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);
- (C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or
- (D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

The criteria for public arbitrators are set forth in Rule 10308(a)(5) of the Code. In general, an individual will be classified as a public arbitrator if he or she is qualified to serve as an arbitrator and is not either personally engaged in certain activities that would make him or her non-public, or the immediate family member of a person engaged in such activities.

In order to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations, NASD believes that revisions to the definitions of public and non-public arbitrators are warranted.

NASD is proposing to amend the definition of public arbitrator to exclude individuals who work for, or are officers or directors of, an entity that controls, is controlled by, or is under common control with, a broker/dealer, or who have a spouse or immediate family member who works for, or is an officer or director of, an entity that is in such a control relationship with a broker/dealer. Currently, such individuals are not covered by the rule. For example, a person who works for a real estate firm that is under

common control with a broker/dealer and perhaps shares the same corporate name may be classified as a public arbitrator under current rules. Since investors may feel that an arbitrator who is employed by a firm in such a control relationship with a broker/dealer is not truly “public,” NASD is proposing to revise the definition of public arbitrator to exclude any person who is employed by, or who has a spouse or an immediate family member who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business.⁴ Similarly, NASD also proposes to exclude from the definition of public arbitrator persons who are officers or directors of, or who have a spouse or an immediate family member who is an officer or director of, an entity in a control relationship with a broker/dealer.

In addition, NASD is proposing to revise the definition of non-public arbitrator to clarify that persons who are registered with a broker/dealer may not be classified as public arbitrators. Under current rules, arbitrators who are associated with a broker or dealer are considered non-public. In the financial services industry, it is not uncommon for a person to be employed by one company (such as a bank or insurance company) and to be registered to sell securities through another company (such as an affiliated broker/dealer). NASD believes that there may be some uncertainty among arbitrators who work for entities in a control relationship with a broker/dealer as to whether they are

⁴ For purposes of this rule, the term “control” has the same meaning that it has for purposes of Form BD, which broker/dealers use to register with NASD and to make periodic updates. Specifically, control is defined as “The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.” See Uniform Application for Broker-Dealer Registration (Form BD).

associated with a broker/dealer for purposes of Rule 10308, even though they hold licenses through the broker/dealer. Since the definition of “person associated with a member” in the NASD By-Laws includes persons who are registered with a broker/dealer, regardless of their status as employees, such persons should be considered non-public arbitrators. Therefore, NASD proposes to amend the definition of non-public arbitrator to specifically include anyone registered through a broker/dealer.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ in general, and with Section 15A(b)(6) of the Act,⁶ in particular, which requires, among other things, that NASD’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, by providing further assurance to parties that individuals with significant ties to the securities industry are not able to serve as public arbitrators in NASD arbitrations, the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD’s arbitration forum.

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 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

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)

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-094)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend Rule 10308 of the NASD Code of Arbitration Procedure Relating to the Classification of Arbitrators

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 17, 2005, the National Association of Securities Dealers, Inc. (“NASD”) 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.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 10308 of the NASD Code of Arbitration Procedure (“Code”) relating to the classification of arbitrators

Below is the text of the proposed rule change.³ Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The rules proposed in this filing will be renumbered as appropriate following Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes; *see* Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR-NASD-2003-158); and the NASD Code of Arbitration Procedure for Industry Disputes; *see* Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR-NASD-2004-011).

10308. Selection of Arbitrators

(a) Definitions

(1) through (3) No change

(4) "non-public arbitrator"

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past 5 years, was:

(i) associated with or registered through a broker or a dealer

(including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and

commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) "public arbitrator"

(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(i) is not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more;

(iii) is not an investment adviser;

(iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); [and]

(v) is not employed by, and is not the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business;

(vi) is not a director or officer of, and is not the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; and

(vii) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs

(a)(4)(A) through (D).

(B) No change

(6) through (7) No change

(b) through (f) No change

* * * * *

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

1. Purpose

The purpose of the proposed rule change is to amend the arbitrator classification criteria in Rule 10308 of the Code to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations.

The Code classifies arbitrators as public or non-public. When investors have a dispute with member firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a panel consisting of either a single public arbitrator, or a majority

public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.⁴

Under Rule 10308(a)(4) of the Code, a person is classified as a non-public arbitrator if he or she:

(A) is, or within the past 5 years, was:

- (i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
- (ii) registered under the Commodity Exchange Act;
- (iii) a member of a commodities exchange or a registered futures association;
- or
- (iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures

⁴ The panel composition for intra-industry disputes (not involving any parties who are investors) is governed by Rule 10202. Depending on the nature of the dispute, intra-industry panels may consist of all public arbitrators, all non-public arbitrators, or a majority of public arbitrators. The arbitrator classification provisions of Rule 10308 apply to all such panels.

or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

The criteria for public arbitrators are set forth in Rule 10308(a)(5) of the Code. In general, an individual will be classified as a public arbitrator if he or she is qualified to serve as an arbitrator and is not either personally engaged in certain activities that would make him or her non-public, or the immediate family member of a person engaged in such activities.

In order to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations, NASD believes that revisions to the definitions of public and non-public arbitrators are warranted.

NASD is proposing to amend the definition of public arbitrator to exclude individuals who work for, or are officers or directors of, an entity that controls, is controlled by, or is under common control with, a broker/dealer, or who have a spouse or immediate family member who works for, or is an officer or director of, an entity that is in such a control relationship with a broker/dealer. Currently, such individuals are not covered by the rule. For example, a person who works for a real estate firm that is under common control with a broker/dealer and perhaps shares the same corporate name may be classified as a public arbitrator under current rules. Since investors may feel that an arbitrator who is employed by a firm in such a control relationship with a broker/dealer is not truly “public,” NASD is proposing to revise the definition of public arbitrator to exclude any person who is employed by, or who has a spouse or an immediate family member who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any

partnership, corporation, or other organization that is engaged in the securities business.⁵

Similarly, NASD also proposes to exclude from the definition of public arbitrator persons who are officers or directors of, or who have a spouse or an immediate family member who is an officer or director of, an entity in a control relationship with a broker/dealer.

In addition, NASD is proposing to revise the definition of non-public arbitrator to clarify that persons who are registered with a broker/dealer may not be classified as public arbitrators. Under current rules, arbitrators who are associated with a broker or dealer are considered non-public. In the financial services industry, it is not uncommon for a person to be employed by one company (such as a bank or insurance company) and to be registered to sell securities through another company (such as an affiliated broker/dealer). NASD believes that there may be some uncertainty among arbitrators who work for entities in a control relationship with a broker/dealer as to whether they are associated with a broker/dealer for purposes of Rule 10308, even though they hold licenses through the broker/dealer. Since the definition of “person associated with a member” in the NASD By-Laws includes persons who are registered with a broker/dealer, regardless of their status as employees, such persons should be considered non-public arbitrators. Therefore, NASD proposes to amend the definition of non-public arbitrator to specifically include anyone registered through a broker/dealer.

⁵ For purposes of this rule, the term “control” has the same meaning that it has for purposes of Form BD, which broker/dealers use to register with NASD and to make periodic updates. Specifically, control is defined as “The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.” See Uniform Application for Broker-Dealer Registration (Form BD).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(6) of the Act,⁷ in particular, which requires, among other things, that NASD'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, by providing further assurance to parties that individuals with significant ties to the securities industry are not able to serve as public arbitrators in NASD arbitrations, the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD's arbitration forum.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

(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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-094 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-2001.

All submissions should refer to File Number SR-NASD-2005-094. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2005-094 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

Action as set forth or recommended herein
APPROVED pursuant to authority delegated by
the Commission under Public Law 87-592.

For the Division of Market Regulation

by: _____

(DATE)

⁸ 17 CFR 200.30-3(a)(12).