

## OMB APPROVAL

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Page 1 of 3

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

File No. SR - 2005 - 079  
Amendment No. 3

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|                                     |                                                                               |                                        |                                                                                                                      |                                                                                                                      |                                                 |
|-------------------------------------|-------------------------------------------------------------------------------|----------------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Initial<br><input type="checkbox"/> | Amendment<br><input checked="" type="checkbox"/>                              | Withdrawal<br><input type="checkbox"/> | Section 19(b)(2)<br><input checked="" type="checkbox"/>                                                              | Section 19(b)(3)(A)<br><input type="checkbox"/>                                                                      | Section 19(b)(3)(B)<br><input type="checkbox"/> |
|                                     |                                                                               |                                        | Rule                                                                                                                 |                                                                                                                      |                                                 |
| Pilot<br><input type="checkbox"/>   | Extension of Time Period<br>for Commission Action<br><input type="checkbox"/> | Date Expires<br><input type="text"/>   | <input type="checkbox"/> 19b-4(f)(1)<br><input type="checkbox"/> 19b-4(f)(2)<br><input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(4)<br><input type="checkbox"/> 19b-4(f)(5)<br><input type="checkbox"/> 19b-4(f)(6) |                                                 |

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).

**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)

(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.

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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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

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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.

On June 17, 2005, NASD filed SR-NASD-2005-079 to revise Rule 10322 of the NASD Code of Arbitration Procedure, which pertains to subpoenas and the power to direct appearances. NASD filed Amendment No. 1 to the proposed rule change on March 29, 2006, which replaced and superseded the original rule filing in its entirety. NASD filed partial Amendment No. 2 to the proposed rule change on May 12, 2006. NASD is filing this partial Amendment No. 3 to make changes to partial Amendment No. 2. New text is underlined; deleted text is in brackets.

1. Please amend item 5 on page 4 of Amendment No. 2 as follows:

Based on comments received in response to the publication of the proposed rule change in the Federal Register, NASD filed Amendments Nos. 1, [and] 2, and 3 to SR-NASD-2005-079 to respond to the comments received and to make revisions to the rule change as described herein.

2. Please amend item 7 on page 4 of Amendment No. 2 as follows:

Under [most circumstances] current practice, the arbitrator responsible for deciding discovery-related motions [will be] typically is the chairperson of the panel. Thus, except in certain intra-industry cases or unless the public customer agrees otherwise, the arbitrator ruling on a motion requesting a subpoena will be a public arbitrator.<sup>1</sup> In those situations where the chairperson is unable to rule promptly on the motion for a subpoena, another public arbitrator on the panel shall decide the motion except when the public customer agrees otherwise.<sup>2</sup> A non-public arbitrator will rule on a motion requesting a subpoena only in those intra-industry cases where the panel is composed exclusively of non-public arbitrators or where the public customer agrees otherwise.<sup>3</sup> Additionally, the arbitrator responsible for deciding discovery-related motions may elect to refer any discovery-related issue to the full panel.<sup>4</sup> NASD has proposed to codify the current practice described above in the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes<sup>5</sup> and the NASD Code of Arbitration Procedure for Industry Disputes.<sup>6</sup>

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<sup>1</sup> See NASD Rules 10308(c)(5) and 10321(e).

<sup>2</sup> See NASD Rule 10321(e).

<sup>3</sup> See NASD Rule 10321(e).

<sup>4</sup> See NASD Rule 10321(e).

<sup>5</sup> See Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR-NASD-2003-158).

<sup>6</sup> See Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR-NASD-2004-011).