

## OMB APPROVAL

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

Page 1 of 5

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

File No. SR - 2003 - 158  
Amendment No. 6

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)

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 EFFF website.

**Form 19b-4 Information**

[Add](#) [Remove](#) [View](#)

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**

[Add](#) [Remove](#) [View](#)

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**

[Add](#) [Remove](#) [View](#)

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**

[Add](#) [Remove](#) [View](#)

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**

[Add](#) [Remove](#) [View](#)

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**

[Add](#) [Remove](#) [View](#)

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**

[Add](#) [Remove](#) [View](#)

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 October 15, 2003, NASD filed SR-NASD-2003-158 to reorganize the customer portion of the NASD Code of Arbitration Procedure (Customer Code), simplify the language, codify current practices, and implement several substantive changes. NASD filed Amendment No. 1 to the proposed rule change on January 3, 2005. Amendment No. 2 was filed on January 19, 2005, and Amendment No. 3 on April 8, 2005. Amendment No. 4, which was a partial amendment, was filed on June 10, 2005, and Amendment No. 5 was filed on May 4, 2006.

NASD is filing this partial Amendment No. 6 to withdraw Proposed Rule 12504, Motions to Decide Claims Before a Hearing on the Merits, from the Customer Code. By withdrawing Proposed Rule 12504, NASD proposes to make the following changes to the rule filing and accompanying exhibits of Amendment No. 5 (new language is underlined, deletions in brackets):

1. On pages 26-27 of Amendment No. 3, under “Dispositive Motions (Proposed Rule 12504),” remove the following language:

**[Dispositive Motions (Proposed Rule 12504)]**

Another recurring question in NASD arbitrations is whether, and to what extent, arbitrators have the authority to decide dispositive motions before a hearing on the merits. In its Follow-up Report on Matters Relating to Securities Arbitration, the General Accounting Office (“GAO”) noted that while NASD’s arbitration rules do not specifically provide for dispositive motions, case law generally supports the authority of arbitrators to grant motions to dismiss claims prior to the hearing on the merits.<sup>1</sup> Because the Code provides no guidance with respect to this question, arbitrator decisions with respect to it lack uniformity.

Generally, NASD believes that parties have the right to a hearing in arbitration. However, NASD also acknowledges that in certain extraordinary circumstances, it would be unfair to require a party to proceed to a hearing. Specifically, the proposed rule would:

- Provide that, except for motions relating to the eligibility of claims under the Code’s six year time limit, motions that would resolve a claim before a hearing on the merits are discouraged, and may only be granted in extraordinary circumstances;
- Require that a prehearing conference before the full panel must be held to discuss the motion before the panel could grant it; and
- Allow the panel to issue sanctions against a party for making a dispositive motion in bad faith.

NASD believes that this rule proposal, which was developed over several years with input from industry and public members of the NAMC, will provide necessary guidance

---

<sup>1</sup> U.S. General Accounting Office, Follow-up Report on Matters Relating to Securities Arbitration (April 11, 2003).

to parties and arbitrators, and make the administration of arbitrations more uniform and transparent. NASD believes that the rule strikes the appropriate balance between allowing the dismissal of claims in limited, extraordinary circumstances and reinforcing the general principle that parties are entitled to a hearing in arbitration.]

2. On pages 30-32 of the Response to Comments and Amendment No. 5, remove the comment summary and response to comments, including the title of the section, under “Motions to Decide Claims Before a Hearing on the Merits (Rule 12504).”

3. On the marked version of the Customer Code, please make the following changes:

- On page 59, under the Table of Contents, Part V, Prehearing Procedures and Discovery:

12504. [Motions to Decide Claims Before a Hearing on the Merits]  
Reserved.

- On page 92, under **12502 (Recording Prehearing Conferences):**

(a) [Except as provided in Rule 12504, p] Prehearing conferences will not be tape-recorded unless the panel determines otherwise, either on its own initiative or upon motion of a party.

(b) No change.

- On pages 92-93, under **12503 (Motions):**

**(a) Motions**

(1) No change

(2) No change.

(3) [Except as provided by Rule 12504, w] Written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise.

(4) No change.

**(b) Responding to Motions**

[Except as provided by Rule 12504, p] Parties have 10 days from the receipt of a written motion to respond to the motion, unless the moving party agrees to an extension of time, or the Director or the panel decides otherwise. Responses to written motions must be served directly on each other party, at the same time and in the same manner. Responses to written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.

**(c) Authority to Decide Motions**

(1) – (4) No change.

(5) The full panel decides all other motions, including motions relating to the eligibility of a claim under Rule 12206, [or to decide a claim or arbitration before a hearing under Rule 12504,] unless the Code provides or the parties agree otherwise.

➤ On pages 93-94:

**12504. Reserved. [Motions to Decide Claims Before a Hearing on the Merits]**

(a) Except as provided in Rule 12206, motions to decide a claim before a hearing are discouraged and may only be granted in extraordinary circumstances.

(b) Motions under this rule must be made in writing. Unless the parties agree or the panel determines otherwise, motions under this rule must be served at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion.

(c) Motions under this rule will be decided by the full panel. The panel may not grant a motion under this rule unless a prehearing conference on the motion is held, or waived by the parties. Prehearing conferences to consider motions under this rule will be tape-recorded.

(d) The panel may issue sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.]

➤ On page 103:

**12700. Dismissal of Proceeding Prior to Award**

(a) No change.

(b) The panel may dismiss a claim or an arbitration:

- Upon motion of a party under Rule 12206 [or Rule 12504]; or
- (No change.)

4. On pages 217-219, 221-223, and 249 of the Comparison Chart, make the same changes as those in No. 3 above.

5. On pages 292, 324-326 and 335 of the final version of the Customer Code, make the same changes as those in No. 3 above.