

OMB APPROVAL

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

File No. SR - 2006 - 101

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 provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas.

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,
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.

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

Add

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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

Add

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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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

Add

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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

Add

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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 provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas.

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

* * * * *

IM-10104. Arbitrators' Honorarium

(a) – (e) No change

(f) Payment for Deciding Contested Subpoena Requests

(1) The honorarium for deciding one or more contested motions requesting the issuance of a subpoena shall be \$200. The honorarium shall be paid on a per case basis to each arbitrator who decides the contested motion(s). The parties shall not be assessed more than \$600 in any arbitration proceeding. The honorarium shall not be paid for cases administered under Rules 10203 or 10302.

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) (SR-NASD-2003-158), 70 FR 36442 (June 23, 2005); and the NASD Code of Arbitration Procedure for Industry Disputes; see Securities Exchange Act Release No. 51857 (June 15, 2005) (SR-NASD-2004-011), 70 FR 36430 (June 23, 2005).

(2) For purposes of paragraph (f)(1), a contested motion requesting the issuance of a subpoena shall include a motion requesting the issuance of a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position.

(3) The panel will allocate the cost of the honorarium under paragraph (f)(1) to the parties pursuant to Rules 10205(c) and 10332(c).

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Dispute Resolution at its meeting on July 19, 2006, 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 the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on July 20, 2006. 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. However, the proposed rule change will not become effective prior to Commission approval of the proposed revisions to Rule 10322, which NASD has previously filed with the Commission.²

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

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 provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas.

Last year, NASD amended IM-10104 of the NASD Code of Arbitration Procedure (“Code”), to provide arbitrators with an honorarium of \$200 to decide discovery-related motions without a hearing session.³ The revised rule, however, does not discuss whether a contested motion concerning a subpoena constitutes a discovery-related motion. As a result, NASD has received questions regarding the appropriate payment, if any, for arbitrators who decide subpoena issues. Specifically, the questions have focused on whether, under the rule, arbitrators should be paid to decide contested motions requesting the issuance of a subpoena.

The issue of whether arbitrators should receive an honorarium for deciding contested subpoena motions will become even more significant should the Commission

² See Securities Exchange Act Release No. 54134 (July 12, 2006) (File No. SR-NASD-2005-079), 71 FR 40762 (July 18, 2006).

³ See Securities Exchange Act Release No. 51931 (June 28, 2005) (File No. SR-NASD-2005-052), 70 FR 38989 (July 6, 2005).

approve certain amendments to Rule 10322 that have been proposed by NASD.⁴ The proposed changes will prohibit attorneys from issuing subpoenas in arbitration and will provide only arbitrators with such authority.⁵ Since attorneys will no longer have the authority to issue subpoenas, NASD anticipates that the number of subpoena requests that will be considered by arbitrators will significantly increase if the proposed changes to Rule 10322 are approved by the Commission.

NASD recognizes that arbitrators may spend a significant amount of time and effort deciding contested subpoena motions and believes that arbitrators should be compensated for this work. Therefore, NASD proposes to provide a \$200 honorarium for each arbitrator who decides contested motions for subpoenas.⁶ Under most circumstances, the chairperson will be the only arbitrator to consider the subpoena requests based on the documents supplied by the parties. If a party requests that the entire panel decide the contested motion, each arbitrator who participates in the decision on the subpoena will receive an honorarium of \$200. The honorarium will be paid on a per case basis, regardless of the number of contested subpoena motions considered by an arbitrator or panel during the case.⁷ Furthermore, the maximum amount that would be

⁴ See Securities Exchange Act Release No. 54134, supra note 2.

⁵ Currently, Rule 10322 allows arbitrators and any counsel of record to the proceedings to issue subpoenas as provided by law.

⁶ For purposes of this rule, a contested motion is defined as a motion to issue a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position. Arbitrators will not be entitled to receive the honorarium if the motion for a subpoena is uncontested.

⁷ This is different from other discovery-related motions, for which an arbitrator receives an honorarium for each motion considered. See IM-10104(e). However, should there be a number of subpoena disputes after the panel has considered a contested subpoena request, the panel may call a prehearing conference to hear and decide the matters, for which they would receive an honorarium for their participation in the session. See IM-10104(a) and (b).

paid by the parties for any one case would be \$600, irrespective of any changes to the composition of the panel.⁸ NASD believes that structuring the honorarium in this manner will limit the arbitration costs for parties while at the same time compensating arbitrators for the time that they spend considering contested subpoena requests.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) and 15A(b)(6) of the Act, which require, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls, and that NASD's rules 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 the proposed rule change is consistent with the provisions of the Act noted above because the panel will allocate the honorarium for deciding a discovery-related motion equitably among the parties. Moreover, the proposed rule change will encourage arbitrators to decide contested subpoena requests without scheduling a prehearing conference, thereby expediting the arbitration process for parties.

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

⁸ In those situations where more than three different arbitrators consider contested subpoena requests, NASD will pay the additional honorarium. Thus, for example, if all three members of a panel have decided a contested subpoena request and the chairperson is thereafter replaced by another arbitrator, NASD would pay the \$200 honorarium to the replacement chairperson for deciding any contested subpoena requests, because the parties already would have incurred \$600 in costs relating to the requests. Likewise, if there have been three different chairpersons in the same proceeding, each of whom has considered a contested subpoena request, NASD would pay the \$200 honorarium should a fourth chairperson consider a contested subpoena request. NASD does not anticipate that either of these situations will occur very frequently.

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)**

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-2006-101)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Provide for the Payment of a \$200 Honorarium per Case for Each Arbitrator who Considers Contested Motions for the Issuance of Subpoenas

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 August 23, 2006, 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 provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas.

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 C.F.R. 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) (SR-NASD-2003-158), 70 FR 36442 (June 23, 2005); and the NASD Code of Arbitration Procedure for Industry Disputes; see Securities Exchange Act Release No. 51857 (June 15, 2005) (SR-NASD-2004-011), 70 FR 36430 (June 23, 2005).

* * * * *

IM-10104. Arbitrators' Honorarium

(a) – (e) No change

(f) Payment for Deciding Contested Subpoena Requests

(1) The honorarium for deciding one or more contested motions requesting the issuance of a subpoena shall be \$200. The honorarium shall be paid on a per case basis to each arbitrator who decides the contested motion(s). The parties shall not be assessed more than \$600 in any arbitration proceeding. The honorarium shall not be paid for cases administered under Rules 10203 or 10302.

(2) For purposes of paragraph (f)(1), a contested motion requesting the issuance of a subpoena shall include a motion requesting the issuance of a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position.

(3) The panel will allocate the cost of the honorarium under paragraph (f)(1) to the parties pursuant to Rules 10205(c) and 10332(c).

* * * * *

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 provide for the payment of a \$200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas.

Last year, NASD amended IM-10104 of the NASD Code of Arbitration Procedure (“Code”), to provide arbitrators with an honorarium of \$200 to decide discovery-related motions without a hearing session.⁴ The revised rule, however, does not discuss whether a contested motion concerning a subpoena constitutes a discovery-related motion. As a result, NASD has received questions regarding the appropriate payment, if any, for arbitrators who decide subpoena issues. Specifically, the questions have focused on whether, under the rule, arbitrators should be paid to decide contested motions requesting the issuance of a subpoena.

The issue of whether arbitrators should receive an honorarium for deciding contested subpoena motions will become even more significant should the Commission approve certain amendments to Rule 10322 that have been proposed by NASD.⁵ The proposed changes will prohibit attorneys from issuing subpoenas in arbitration and will provide only arbitrators with such authority.⁶ Since attorneys will no longer have the authority to issue subpoenas, NASD anticipates that the number of subpoena requests that

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⁶ Currently, Rule 10322 allows arbitrators and any counsel of record to the proceedings to issue subpoenas as provided by law.

will be considered by arbitrators will significantly increase if the proposed changes to Rule 10322 are approved by the Commission.

NASD recognizes that arbitrators may spend a significant amount of time and effort deciding contested subpoena motions and believes that arbitrators should be compensated for this work. Therefore, NASD proposes to provide a \$200 honorarium for each arbitrator who decides contested motions for subpoenas.⁷ Under most circumstances, the chairperson will be the only arbitrator to consider the subpoena requests based on the documents supplied by the parties. If a party requests that the entire panel decide the contested motion, each arbitrator who participates in the decision on the subpoena will receive an honorarium of \$200. The honorarium will be paid on a per case basis, regardless of the number of contested subpoena motions considered by an arbitrator or panel during the case.⁸ Furthermore, the maximum amount that would be paid by the parties for any one case would be \$600, irrespective of any changes to the composition of the panel.⁹ NASD believes that structuring the honorarium in this manner

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⁸ This is different from other discovery-related motions, for which an arbitrator receives an honorarium for each motion considered. See IM-10104(e). However, should there be a number of subpoena disputes after the panel has considered a contested subpoena request, the panel may call a prehearing conference to hear and decide the matters, for which they would receive an honorarium for their participation in the session. See IM-10104(a) and (b).

⁹ In those situations where more than three different arbitrators consider contested subpoena requests, NASD will pay the additional honorarium. Thus, for example, if all three members of a panel have decided a contested subpoena request and the chairperson is thereafter replaced by another arbitrator, NASD would pay the \$200 honorarium to the replacement chairperson for deciding any contested subpoena requests, because the parties already would have incurred \$600 in costs relating to the requests. Likewise, if there have been three different chairpersons in the same proceeding, each of whom has considered a contested subpoena request, NASD would pay the \$200 honorarium should a fourth chairperson consider a contested subpoena request. NASD does not anticipate that either of these situations will occur very frequently.

will limit the arbitration costs for parties while at the same time compensating arbitrators for the time that they spend considering contested subpoena requests.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) and 15A(b)(6) of the Act, which require, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls, and that NASD's rules 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 the proposed rule change is consistent with the provisions of the Act noted above because the panel will allocate the honorarium for deciding a discovery-related motion equitably among the parties. Moreover, the proposed rule change will encourage arbitrators to decide contested subpoena requests without scheduling a prehearing conference, thereby expediting the arbitration process for parties.

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.

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 (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-2006-101 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-101. 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 in 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 File Number SR-NASD-2006-101 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.¹⁰

Nancy M. Morris

Secretary

¹⁰ 17 C.F.R. 200.30-3(a)(12).