

OMB APPROVAL

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

File No. SR - 2006 - 109
Amendment No. 2

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		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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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 Mignon Last Name McLemore
Title Assistant Chief Counsel
E-mail mignon.mclemore@nasd.com
Telephone (202) 728-8151 Fax (301) 527-4752

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 02/23/2007

By Jean I. Feeney
(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

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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 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

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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 September 14, 2006, NASD filed SR-NASD-2006-109 to amend the Code of Arbitration Procedure for Customer Disputes (“Customer Code”), the Code of Arbitration Procedure for Industry Disputes (“Industry Code”), and the NASD Code of Arbitration Procedure (“Code”) to address representation of parties in arbitration and mediation. On November 9, 2006, NASD filed Amendment No. 1 to the proposed rule change, which adds clarifying language to the rule text to emphasize that attorneys may represent parties in NASD’s forum, unless state law prohibits such representation. Amendment No. 1 also makes several non-substantive and technical changes to the Purpose Section of the proposed rule change to explain further certain issues addressed in the proposal.

NASD is filing Partial Amendment No. 2 to amend the proposal to clarify further the intent of the rule language. Amendment No. 2 also makes a non-substantive change to the Purpose Section of the proposed rule change to explain further an issue addressed in the proposal. (New language is underlined; deletions are in brackets.):

1. On pages 4-5, under §I, Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change, of the Exhibit for Amendment No. 1, please make the following changes to the first full paragraph and footnote 3:

NASD Dispute Resolution is proposing to amend the [proposed] Code of Arbitration Procedure for Customer Disputes (“Customer Code”), the [proposed] Code of Arbitration Procedure for Industry Disputes (“Industry Code”), and the NASD Code of Arbitration Procedure (“Code”) to address representation of parties in arbitration and mediation.

Footnote 3:

The proposed rule change contemplates changes to [Proposed] Rules 12208 and 13208 of the [proposed] Customer and Industry Codes, which restate [current] old Rule 10316. See [Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR-NASD-2003-158 - NASD Code of Arbitration Procedure for Customer Disputes); and see Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR-NASD-2004-011 – NASD Code of Arbitration Procedure for Industry Disputes).] Securities Exchange Act Release No. 55158 (Jan. 24, 2007); 72 FR 4574 (Jan. 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011) (Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto; Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Industry Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto). [The proposed Customer and Industry Codes are subject to approval by the SEC; otherwise, the text of the proposed rule change will be incorporated into Rule 10316.] The changes to Proposed Rule 10407 reflect changes to the new NASD Code of Mediation Procedure. See Securities Exchange Act Rel. No. 34-52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (SR-NASD-2004-013). The new NASD Code of Mediation Procedure is currently included in the Code, but [would need to] will be removed and renumbered as a separate Code [upon any approval by the SEC of] now that the Customer and Industry Codes have been approved.

2. On pages 5-7 of the Exhibit for Amendment No. 1, please make the following changes to the rule language:

Customer Code

12208. Representation of Parties**(a) Representation by a Party**

No change.

(b) Representation by an Attorney

No change.

(c) Representation by Others

Parties may be represented in an arbitration by a person who is not an attorney, unless:

- state law prohibits such representation, or
- the person is currently suspended or barred from the securities industry in any capacity, or
- the person [is an attorney who] is currently suspended from the practice of law or disbarred [from the practice of law].

(d) Qualifications of Representative

No change.

Industry Code**13208. Representation of Parties****(a) Representation by a Party**

No change.

(b) Representation by an Attorney

No change.

(c) Representation by Others

Parties may be represented in an arbitration by a person who is not an attorney, unless:

- state law prohibits such representation, or
- the person is currently suspended or barred from the securities industry in any capacity, or
- the person [is an attorney who] is currently suspended from the practice of law or disbarred [from the practice of law].

(d) Qualifications of Representative

No change.

* * *

Code of Arbitration Procedure

10407. Representation of Parties

(a) Representation by Party

No change.

(b) Representation by an Attorney

No change.

(c) Representation by Others

Parties may be represented in mediation by a person who is not an attorney, unless:

- state law prohibits such representation, or
- the person is currently suspended or barred from the securities industry in any capacity, or
- the person [is an attorney who] is currently suspended from the practice of law or disbarred [from the practice of law].

(d) Qualifications of Representatives

No change.

Rules 10408 – 10411.

No change.

2. On pages 9-10 of the Exhibit for Amendment No. 1, please make the following changes to the first full paragraph:

In light of these developments, the American Bar Association (ABA) amended its Model Rule of Professional Conduct 5.5 (ABA Model Rule 5.5) to promote the multi-jurisdictional practice of law. [ABA Model Rule 5.5 would permit attorneys to provide legal services to a client in a dispute resolution proceeding within a United States jurisdiction where they are not licensed without violating the state's unauthorized practice of law rules.]⁵ [ABA Model Rule 5.5, however, is only applicable within states

⁵ ABA Model Rule 5.5, as amended, would allow a United States lawyer, admitted in one United States jurisdiction, to engage in certain types of legal activity in another United States jurisdiction where he is not licensed to practice, without being deemed to be engaging in the unauthorized practice of law. For purposes of the dispute resolution forum, ABA Model Rule 5.5, as amended, states, in relevant part, that a lawyer may provide legal services on a temporary basis in an out-of-state jurisdiction that are in or

that adopt the rule into their laws. Some states have adopted either ABA Model Rule 5.5 or a similar version of the rule.⁶ Other states have adopted a temporary practice rule that, like ABA Model Rule 5.5, allows an attorney not licensed in a state to provide certain types of legal services in the state on a limited basis.⁷

reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in the jurisdiction or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission. This rule is sometimes referred to as the temporary practice rule. Twenty-seven states have either adopted ABA Model Rule 5.5 or a similar version of the rule or currently have a temporary practice rule in effect. American Bar Association, *Charts on State Adoption of MJP Proposals* (visited Aug. 23, 2006) <http://www.abanet.org/cpr/mjp/state_adoption.html >. Other states have adopted a temporary practice rule that, like ABA Model Rule 5.5, allows an attorney not licensed in a state to provide certain types of legal services in the state on a limited basis. The laws of Michigan and Virginia specifically authorize occasional or incidental practice by out-of-state lawyers. See Mich. Comp. Law Ann. sec. 600.916 and Va. State Bar Rule, Pt. 6, sec. 1(C).

[⁶ Twenty-seven states have either adopted ABA Model Rule 5.5 or a similar version of the rule or currently have a temporary practice rule in effect. American Bar Association, *Charts on State Adoption of MJP Proposals* (visited Aug. 23, 2006) <http://www.abanet.org/cpr/mjp/state_adoption.html >.]

[⁷ The laws of Michigan and Virginia specifically authorize occasional or incidental practice by out-of-state lawyers. See Mich. Comp. Law Ann. sec. 600.916 and Va. State Bar Rule, Pt. 6, sec. 1(C).]