

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

The proposal amends the definition of public arbitrator under the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes to add an annual revenue limitation.

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 Vice President and Chief Counsel, NASD Dispute Resolution
 (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 EFFS 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

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

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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 the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to amend the definition of public arbitrator under the Customer and Industry Codes to add an annual revenue limitation. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

Customer Code

12100(u). Public Arbitrator

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

(1) is not engaged in the conduct or activities described in paragraphs (p)(1)-(4);

(2) was not engaged in the conduct or activities described in paragraphs (p)(1)-(4) for a total of 20 years or more;

(3) is not an investment adviser;

(4) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (p)(1)-(4);

(5) is not an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph (p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

(6) 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;

[(6)] (7) 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

[(7)] (8) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (p)(1)-(4). For purposes of this rule, the term immediate family member means:

- (A) a person's parent, stepparent, child, or stepchild;
- (B) a member of a person's household;
- (C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or
- (D) a person who is claimed as a dependent for federal income tax purposes.

For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

* * *

Industry Code

13100(u). Public Arbitrator

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

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(3) is not an investment adviser;

(4) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (p)(1)-(4);

(5) is not an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph 13100(p)(1)

relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

(6) 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;

[(6)] (7) 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

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* * *

(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 December 5, 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 December 6, 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.

The 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 30 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution at (202) 728-8151.

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

a) Purpose

Background

NASD has taken numerous steps in recent years to ensure the integrity and neutrality of its arbitrator roster by addressing classification of arbitrators. For example, in August 2003, NASD proposed changes to Rules 10308 and 10312 of the Code of Arbitration Procedure (Code) to modify the definitions of public and non-public

arbitrators to further prevent individuals with significant ties to the securities industry from serving as public arbitrators.¹ The 2003 proposal:

- Increased from three years to five years the period for transitioning from a non-public to public arbitrator after leaving the securities industry.
- Clarified that the term "retired" from the industry includes anyone who spent a substantial part of his or her career in the industry.
- Prohibited anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how long ago the association ended.
- Excluded from the public arbitrator roster attorneys, accountants, or other professionals whose firms have derived 10 percent or more of their annual revenue in the previous two years from clients involved in securities-related activities.

The proposal was approved and became effective on July 19, 2004.²

On July 22, 2005, NASD proposed a further amendment to Rule 10308 of the Code relating to arbitrator classification to prevent individuals with certain indirect ties to the securities industry from serving as public arbitrators. Specifically, NASD proposed 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

¹ In July 2002, the SEC retained Professor Michael Perino to assess the adequacy of arbitrator disclosure requirements at NASD and at the New York Stock Exchange (NYSE). Professor Perino's report (Perino Report) concluded that undisclosed conflicts of interest were not a significant problem in arbitrations sponsored by self-regulatory organizations (SROs), such as NASD and the NYSE. However, the Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that might "provide additional assurance to investors that arbitrations are in fact neutral and fair." This proposal implemented the recommendations of the Perino Report as well as several other related changes to the definition of public and non-public arbitrators that were consistent with the Perino Report recommendations.

² See Securities Exchange Act Rel. No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (File No. SR-NASD-2003-95)(Order Granting Approval to a Proposed Rule Change Relating to Arbitrator Classification and Disclosure in NASD Arbitrations). The changes were announced in Notice to Members 04-49 (June 2004).

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. NASD also proposed to amend Rule 10308 to clarify that individuals registered through broker-dealers may not be public arbitrators, even if they are employed by a non-broker-dealer (such as a bank). This rule filing was approved by the SEC on October 16, 2006, and became effective on January 15, 2007.³

Finally, during the time that the above changes were being made, NASD also had pending at the SEC a 2003 proposal to amend the Code to reorganize the rules, simplify the language, codify current practices, and implement several substantive changes. This proposal was approved by the SEC on January 24, 2007, and will become effective on April 16, 2007.⁴ Several of the substantive changes to the Customer and Industry Codes

³ See Securities Exchange Act Rel. No. 54607 (Oct. 16, 2006), 71 FR 62026 (Oct. 20, 2006) (File No. SR-NASD-2005-094)(Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration Procedure). The changes were announced in Notice to Members 06-64 (November 2006).

⁴ See Securities Exchange Act Rel. No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (File No. SR-NASD-2003-158) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Code of Arbitration Procedure for Customer Disputes); see Securities Exchange Act Rel. No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (File No. SR-NASD-2004-011) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Code of Arbitration Procedure for Industry Disputes); and see Securities Exchange Act Rel. No. 51855 (June 15, 2005), 70 FR 36440 (June 23, 2005) (File No. SR-NASD-2004-013) (Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto to Amend NASD Arbitration Rules for Mediation Proceedings). The changes were announced in Notice to Members 07-07 (February 2007).

will affect the classification of arbitrators⁵ and how they are selected for panels.⁶

Proposal to Amend the Definition of Public Arbitrator

Despite these many initiatives amending the arbitrator classification rules, some users of the forum continue to voice concerns about individuals serving as public arbitrators when they have business relationships with entities that derive income from broker-dealers. The concern is that, for example, an arbitrator classified as public might work for a very large law firm that derived less than 10% of its annual revenue from broker-dealer clients, but still receives a large dollar amount of such revenue. The concern focused primarily on the law firm's defense of action (in arbitration or litigation) by customers of broker-dealers, and not on representing broker-dealers in underwriting or other activities. Therefore, those concerned with the amount of annual revenue recommended that there be an annual dollar limitation of \$50,000 on revenue from broker-dealers relating to customer disputes with a brokerage firm or associated person concerning an investment account.

NASD supports these recommendations and is, therefore, proposing to amend the definition of public arbitrator in Rule 12100(u) of the Customer Code and Rule 13100(u) of the Industry Code to add a provision that would prevent an attorney, accountant, or other professional from being classified as a public arbitrator, if the person's firm derived

⁵ The new Codes have improved the arbitrator selection process by creating and maintaining a new roster of arbitrators who are qualified to serve as chairpersons. The chair roster will consist of more experienced arbitrators available on NASD's public arbitrator roster for all investor cases and for certain intra-industry cases. For other industry cases, the Code also creates a chair roster of experienced non-public arbitrators. See Rules 12400(b) and (c) of the Customer Code and Rules 13400(b) and (c) of Industry Code.

⁶ The new Codes also change how arbitrator lists are generated and how arbitrators are selected for a panel. See Rules 12403 and 12404 of the Customer Code and Rules 13403 and 13404 of the Industry Code.

\$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in Rules 12100(p)(1) or 13100(p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees.⁷

NASD believes the proposed amendment, in conjunction with the existing 10 percent revenue limitation,⁸ will further improve NASD's public arbitrator roster by ensuring that arbitrators whose firms receive a significant amount of compensation from any persons or entities associated with or engaged in the securities, commodities, or futures business are removed from the public roster.⁹

b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association'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

⁷ Rule 12100(p) defines "non-public arbitrator." Paragraph (1) of the rule states, in relevant part, that the term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and is or, within the past five years, was:

- (A) associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
- (B) registered under the Commodity Exchange Act;
- (C) a member of a commodities exchange or a registered futures association; or
- (D) associated with a person or firm registered under the Commodity Exchange Act.

The rule language in Rule 13100(p) is the same as that of Rule 12100(p).

⁸ See *supra* note 2. Under the July 2004 amendments, a public arbitrator cannot be "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 Rules 12100(p)(1) and 13100(p)(1) of the new Codes."

⁹ NASD will survey its public arbitrators to determine which arbitrators will be removed from the roster for appointment to new cases upon the effective date of the proposed rule.

public interest. NASD believes that the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD's arbitration forum, by providing further assurance to parties that persons who receive a significant amount of compensation from the securities industry are not able to serve as public arbitrators in NASD arbitrations.

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. 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 by NASD

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.

SECURITIES AND EXCHANGE COMMISSION
 Release No. 34-_____; File No. SR-NASD-2007-021

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend the Definition of Public Arbitrator

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 the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (“NASD Dispute Resolution”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) on March 12, 2007, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. 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 Dispute Resolution is proposing to amend the Code of Arbitration Procedure for Customer Disputes (“Customer Code”), and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) to amend the definition of public arbitrator to add an annual revenue limitation. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Customer Code

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(2) was not engaged in the conduct or activities described in paragraphs (p)(1)-(4) for a total of 20 years or more;

(3) is not an investment adviser;

(4) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from any persons or entities listed in paragraphs (p)(1)-(4);

(5) is not an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph (p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

(6) 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;

[(6)] (7) 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

[(7)] (8) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (p)(1)-(4). For purposes of this rule, the term immediate family member means:

(A) a person's parent, stepparent, child, or stepchild;

(B) a member of a person's household;

(C) an individual to whom a person provides financial support of more than 50 percent of his or her annual income; or

(D) a person who is claimed as a dependent for federal income tax purposes.

For purposes of this rule, the term "revenue" shall not include mediation fees received by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation.

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(5) is not an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph 13100(p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

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* * * *

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

(a) Purpose

Background

NASD has taken numerous steps in recent years to ensure the integrity and neutrality of its arbitrator roster by addressing classification of arbitrators. For example, in August 2003, NASD proposed changes to Rules 10308 and 10312 of the Code of Arbitration Procedure (Code) to modify the definitions of public and non-public arbitrators to further prevent individuals with significant ties to the securities industry from serving as public arbitrators.³ The 2003 proposal:

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- Increased from three years to five years the period for transitioning from a non-public to public arbitrator after leaving the securities industry.
- Clarified that the term "retired" from the industry includes anyone who spent a substantial part of his or her career in the industry.
- Prohibited anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how long ago the association ended.
- Excluded from the public arbitrator roster attorneys, accountants, or other professionals whose firms have derived 10 percent or more of their annual revenue in the previous two years from clients involved in securities-related activities.

The proposal was approved and became effective on July 19, 2004.⁴

On July 22, 2005, NASD proposed a further amendment to Rule 10308 of the Code relating to arbitrator classification to prevent individuals with certain indirect ties to the securities industry from serving as public arbitrators. Specifically, NASD proposed 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. NASD also proposed to amend Rule 10308 to clarify that individuals registered through broker-dealers may not be public arbitrators, even if they are employed by a non-broker-

several other related changes to the definition of public and non-public arbitrators that were consistent with the Perino Report recommendations.

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Finally, during the time that the above changes were being made, NASD also had pending at the SEC a 2003 proposal to amend the Code to reorganize the rules, simplify the language, codify current practices, and implement several substantive changes. This proposal was approved by the SEC on January 24, 2007, and will become effective on April 16, 2007.⁶ Several of the substantive changes to the Customer and Industry Codes will affect the classification of arbitrators⁷ and how they are selected for panels.⁸

Proposal to Amend the Definition of Public Arbitrator

Despite these many initiatives amending the arbitrator classification rules, some users of the forum continue to voice concerns about individuals serving as public arbitrators when

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⁷ The new Codes have improved the arbitrator selection process by creating and maintaining a new roster of arbitrators who are qualified to serve as chairpersons. The chair roster will consist of more experienced arbitrators available on NASD's public arbitrator roster for all investor cases and for certain intra-industry cases. For other industry cases, the Code also creates a chair roster of experienced non-public arbitrators. See Rules 12400(b) and (c) of the Customer Code and Rules 13400(b) and (c) of Industry Code.

⁸ The new Codes also change how arbitrator lists are generated and how arbitrators are selected for a panel. See Rules 12403 and 12404 of the Customer Code and Rules 13403 and 13404 of the Industry Code.

they have business relationships with entities that derive income from broker-dealers. The concern is that, for example, an arbitrator classified as public might work for a very large law firm that derived less than 10% of its annual revenue from broker-dealer clients, but still receives a large dollar amount of such revenue. The concern focused primarily on the law firm's defense of action (in arbitration or litigation) by customers of broker-dealers, and not on representing broker-dealers in underwriting or other activities. Therefore, those concerned with the amount of annual revenue recommended that there be an annual dollar limitation of \$50,000 on revenue from broker-dealers relating to customer disputes with a brokerage firm or associated person concerning an investment account.

NASD supports these recommendations and is, therefore, proposing to amend the definition of public arbitrator in Rule 12100(u) of the Customer Code and Rule 13100(u) of the Industry Code to add a provision that would prevent an attorney, accountant, or other professional from being classified as a public arbitrator, if the person's firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in Rules 12100(p)(1) or 13100(p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees.⁹

⁹ Rule 12100(p) defines "non-public arbitrator." Paragraph (1) of the rule states, in relevant part, that the term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and is or, within the past five years, was:

- (A) associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
- (B) registered under the Commodity Exchange Act;
- (C) a member of a commodities exchange or a registered futures association; or
- (D) associated with a person or firm registered under the Commodity Exchange Act.

The rule language in Rule 13100(p) is the same as that of Rule 12100(p).

NASD believes the proposed amendment, in conjunction with the existing 10 percent revenue limitation,¹⁰ will further improve NASD's public arbitrator roster by ensuring that arbitrators whose firms receive a significant amount of compensation from any persons or entities associated with or engaged in the securities, commodities, or futures business are removed from the public roster.¹¹

(b) Statutory Basis

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

(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

¹⁰ See *supra* note 2. Under the July 2004 amendments, a public arbitrator cannot be "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 Rules 12100(p)(1) and 13100(p)(1) of the new Codes."

¹¹ NASD will survey its public arbitrators to determine which arbitrators will be removed from the roster for appointment to new cases upon the effective date of the proposed rule.

Written comments were neither solicited nor received by NASD.

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-2007-021 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2007-021. 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 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-2007-021 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.¹²

Jonathan G. Katz
Secretary

¹²

17 CFR 200.30-3(a)(12).

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)