

*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**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-075 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-075. 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 Nasdaq.

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-2005-075 and should be submitted on or before July 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51931; File No. SR-NASD-2005-052]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Honorarium for Arbitrators Deciding Discovery-Related Motions**

June 28, 2005.

**I. Introduction**

On April 14, 2005, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to an honorarium for arbitrators deciding

discovery-related motions. On April 29, 2005, NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change. On May 6, 2005, NASD Dispute Resolution submitted Amendment No. 2. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 19, 2005.<sup>3</sup> The Commission received one comment on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

**II. Description of the Proposed Rule Change**

*A. Description of the Proposal*

In 2002, NASD Dispute Resolution conducted arbitrator focus groups across the country. One of the consistently raised concerns was the amount of time and effort invested by chairpersons in reviewing and deciding various discovery motions, especially in situations in which the motions are decided without a hearing (*i.e.*, on the papers). Also, Dispute Resolution staff has found that the current lack of compensation for deciding such motions has made it more difficult to recruit current arbitrators to become chairpersons. Currently, arbitrators are not compensated for deciding discovery motions on the papers. Arbitrators are compensated, however, when they conduct pre-hearing conferences to hear arguments from parties regarding discovery motions.

NASD, therefore, proposed to adopt a rule to compensate arbitrators in the amount of \$200 (the same amount that is paid for an arbitrator to participate in a pre-hearing conference regarding discovery) to decide discovery motions on the papers. The new rule language states that NASD will pay arbitrators an honorarium of \$200 to decide a discovery-related motion without a hearing session. For purposes of this rule, a discovery-related motion and any replies or other correspondence relating to the motion will be considered to be a single motion. If more than one arbitrator considers a discovery-related motion, each arbitrator will receive \$200. The panel will allocate the cost of the honoraria as part of the eventual arbitration award. The rule will not apply to simplified cases administered under Rules 10203 and 10302.

*B. Comment Summary*

The proposal was published for comment in the **Federal Register** on

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 51693 (May 12, 2005), 70 FR 28972 (May 19, 2005) (the "Notice").

May 19, 2005.<sup>4</sup> We received one comment letter on the proposal which suggested that compensation to arbitrators should be based on units of time required to decide discovery motion on the papers and also proposed several alternatives for improving the arbitration process.<sup>5</sup> In response to the Greenberg Letter, the NASD states that "NASD concluded that variable fee structures based on such factors as the number or complexity of motions or the time spent by an arbitrator in deciding a discovery-related motion on the papers could result in unlimited costs for the parties."<sup>6</sup> The NASD therefore concluded that "a set fee would be the most efficient way to compensate arbitrators for the additional work in deciding discovery-related motions, while keeping costs to the parties at reasonable and predictable levels."<sup>7</sup> The NASD indicated that the remaining items in the Greenberg Letter were beyond the scope of the proposed rule change.<sup>8</sup>

### III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the provisions of Sections 15A(b)(5)<sup>9</sup> and 15A(b)(6)<sup>10</sup> of the Act, which require, among other things, that the 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 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. The Commission believes that the proposed rule change, as amended, accomplishes these goals by encouraging arbitrators to decide discovery-related motions on the papers without the need for a pre-hearing conference (while keeping costs to the parties at reasonable and predictable levels), thereby expediting the pace of arbitrations, which should reduce the

time between the filing of an arbitration claim and the rendering of an award.

### IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>11</sup> that the proposed rule change, as amended (SR-NASD-2005-052), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51935; File No. SR-NASD-2005-066]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to NASD Rule 3011 and the Adoption of New Related Interpretive Material

June 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2005, 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 amend NASD Rule 3011 and adopt new related interpretive material ("IM"), to (1) require each member to conduct the independent test of its anti-money laundering program on an annual basis, with the exception of certain types of firms, which would be allowed to test every two years; (2) clarify the persons not considered to be independent for purposes of Rule 3011(c), and therefore not eligible to conduct the test; and (3) require a member to review and update, if necessary, the accuracy of the

member's anti-money laundering compliance person information on a quarterly basis. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's Office of the Secretary, and at the Commission's Public Reference Room.

#### 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

Financial institutions, including broker-dealers, must develop and implement anti-money laundering ("AML") programs pursuant to the Bank Secrecy Act,<sup>3</sup> as amended by Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 ("PATRIOT Act").<sup>4</sup> Consistent with Treasury regulation 31 CFR 103.120 under the Bank Secrecy Act, NASD Rule 3011 requires that each member develop and implement a written AML program and specifies the minimum requirements for those programs.

###### Independent Testing

One of the AML program requirements is that firms independently test their AML programs. Testing allows a member to review and assess the adequacy of the firm's AML program and the firm's degree of compliance with its written procedures. Test results alert members to any deficiencies in their AML programs, thereby allowing them to take appropriate corrective action or disciplinary action as the situation may warrant. The independent test report also is an important tool for regulators during their examinations of firms for

<sup>3</sup> Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330.

<sup>4</sup> Pub. L. 107-56, 115 Stat. 272 (2001).

<sup>4</sup> See Notice, *supra* note 3.

<sup>5</sup> See letter from Les Greenberg, Law Offices of Les Greenberg, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, received May 31, 2005 ("Greenberg Letter").

<sup>6</sup> See letter from Mignon McLemore, Associate Chief Counsel, NASD, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Commission, dated June 24, 2005.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.