

the Commission of any written comments received by DTC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> thereunder because the proposed rule effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was 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-DTC-2007-09 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-DTC-2007-09. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days from 10 a.m. to 3 p.m. The text of the proposed rule change is available at DTC, the Commission's Public Reference Room, and [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-09.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-09.pdf). 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-DTC-2007-09 and should be submitted on or before October 24, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-19534 Filed 10-2-07; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56540; File No. SR-NASD-2006-109]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Relating to Representation of Parties in Arbitration and Mediation

September 26, 2007.

#### I. Introduction

On September 14, 2006, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA")), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") (n/k/a, FINRA Dispute Resolution, Inc.), 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 representation of parties in arbitration and mediation.<sup>3</sup> On November 9, 2006 and February 23, 2007, NASD Dispute Resolution submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 13, 2007.<sup>4</sup> The Commission received five comments on the proposal.<sup>5</sup> For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

#### II. Description of the Proposal

The changes to NASD's Code of Arbitration Procedure for Customer Disputes, Code of Arbitration Procedure for Industry Disputes, and Code of Mediation Procedure provide that in both arbitration and mediation: (1) Parties may represent themselves; (2) parties may be represented by an attorney, provided certain criteria are met; (3) parties may be represented 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 is currently suspended from the practice of law or disbarred; and (4) issues regarding qualifications of a representative are governed by applicable law.

First, the proposed rule change codifies current practice by explicitly stating that parties may represent themselves in arbitration.

Second, the proposed rule change codifies current practice permitting the multi-jurisdictional practice of law by attorneys in the NASD Dispute Resolution forum to the extent permitted by state law. In addition, the proposed rule change states that if a party chooses to be represented by an attorney, the attorney must be licensed to practice in a U.S. jurisdiction and be

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

<sup>3</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

<sup>4</sup> See Securities Exchange Act Release No. 55604 (April 9, 2007), 72 FR 18703 (April 13, 2007).

<sup>5</sup> See letters to Nancy Morris, Secretary, Commission, from Timothy Canning, Law Offices of Timothy A. Canning, dated May 4, 2007 ("Canning"); Vincent DiCarlo, Law Offices of Vincent DiCarlo, dated May 4, 2007 ("DiCarlo"); Jill I. Gross, Director of Advocacy, Pace Investor Rights Project, dated May 4, 2007 ("Pace"); Richard L. Sacks, dated May 3, 2007 ("Sacks"); and Irwin G. Stein, dated May 4, 2007 ("Stein").

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

in good standing in that jurisdiction.<sup>6</sup> NASD stated that requiring an attorney to be licensed and in good standing in a U.S. jurisdiction will protect investors by prohibiting individuals who have been suspended from the practice of law or disbarred from representing parties in the NASD forum. Further, NASD stated that the requirement for an attorney to be licensed to practice in a U.S. jurisdiction sets a standard of practice for its forum that is consistent with the other rules and proceedings of NASD.

Third, the proposed rule change addresses the representation of parties by non-attorneys in the NASD forum. Under the proposed rule change, parties may be represented in an arbitration or mediation by a person who is not an attorney, unless applicable law prohibits such representation or the person is currently suspended or barred from the securities industry in any capacity or is currently suspended from the practice of law or disbarred.

While this provision would be applicable to all arbitration claims, it may be particularly beneficial for certain investors that may have difficulty retaining an attorney on a contingency-fee basis. For example, investors with small claims may be unable to retain an attorney because the attorney may believe that the attorney's share of any award would be too small to justify the effort. In these circumstances, investors may benefit from being able to seek other assistance to resolve their arbitration or mediation claims for a more affordable fee.<sup>7</sup> At the same time, NASD stated that such non-attorney representatives should not be persons who have been found by a regulatory body in essence to be unfit to represent clients or to conduct securities business with the public. Thus, to protect investors, the rule would

prohibit non-attorney representatives who are currently suspended or barred from the securities industry, or are currently suspended from the practice of law or disbarred, from representing parties in the NASD Dispute Resolution forum.

Last, the proposed rule change would allow an attorney to represent a client in an NASD arbitration or mediation held in any U.S. hearing location, regardless of the jurisdiction in which the attorney is licensed. An attorney's ability to represent clients in a jurisdiction in which he or she is not licensed, however, would be subject to the applicable law of that jurisdiction. The proposed rule change is not intended to preempt state law; it is intended to reflect current practice in the forum which, based on experience, indicates that the outcome of a dispute resolution proceeding depends more on the level of knowledge, training and skill of the attorneys, rather than the jurisdiction from which the attorneys received their license to practice.

### III. Comment Summary and Response to Comments

The Commission received five comments<sup>8</sup> on the proposal and a response to comments.<sup>9</sup> One commenter generally expressed support for the proposed rule change.<sup>10</sup> The remaining four commenters opposed the proposed rule change and the NASD Response addressed these comments.<sup>11</sup>

Three commenters expressed the view that there should be a uniform national rule governing who can represent a party in a NASD forum, rather than permitting the incorporation of state rules that may vary from jurisdiction to jurisdiction.<sup>12</sup> These commenters suggested that NASD should adopt a uniform rule that would preempt contrary state laws.<sup>13</sup> NASD indicated that it had determined that "there is no overriding need for a uniform rule in this area, and that the continued compliance with state rules is in the best interests of all participants in its arbitration forum."<sup>14</sup> NASD also noted that this position is consistent with its previous position with respect to

arbitrator disclosure, distinguishing attorney qualification rules and rules regulating arbitration procedure.<sup>15</sup>

Four commenters stated that the proposed rule change would penalize retroactively those persons who are currently suspended or barred from the securities industry by prohibiting them from representing a party in an arbitration or mediation proceeding.<sup>16</sup> In their view, it would impose a new penalty on those who have had their misconduct adjudicated and sanctions imposed.<sup>17</sup> NASD indicated that the rule is "designed to protect investors" and that at a minimum a non-attorney representative should not be "a person whom a regulatory body has suspended or barred from representing clients or conducting securities business with the public."<sup>18</sup>

In addition, in response to comments that the proposed rule may unduly limit investor choices,<sup>19</sup> NASD stated that it believes that the limitations on the choice of representation under the proposed rule are appropriate and would protect investors.<sup>20</sup>

### IV. Discussion and Findings

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>21</sup> which requires, among other things, that NASD'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. The Commission believes that the proposed rule change meets this standard by balancing the needs of investors to have access to representation, particularly in small cases, with NASD's responsibility to protect investors, the integrity of its forum, and the public interest.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-NASD-2006-109), as amended, be, and hereby is, approved.

<sup>6</sup> The requirement to be licensed to practice in a U.S. jurisdiction and be in good standing in that jurisdiction is in addition to and not in lieu of the requirement that an attorney must comply with applicable laws of the relevant jurisdiction. While the multi-jurisdictional practice of law may be permitted in many jurisdictions, it may constitute a violation of certain states' unauthorized practice of law provisions.

<sup>7</sup> Consistent with current practice, the proposed rule would allow a relative, friend or associate to represent or assist a person (e.g., an elderly or disabled person) with his or her arbitration or mediation. In addition, law school securities arbitration clinics can provide investors with affordable legal representation. A securities arbitration clinic also can help an investor who has a smaller claim but is unable to hire an attorney, provided the investor qualifies for assistance. See *How to Find an Attorney* (for more information on clinic locations and eligibility requirements), available at: <http://www.finra.org/ArbitrationMediation/StartanArbitrationorMediation/HowtoFindanAttorney/index.htm>.

<sup>8</sup> Canning, DiCarlo, Pace, Sacks, and Stein.

<sup>9</sup> See letter to Nancy Morris, Secretary, Commission, from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, dated September 17, 2007 ("NASD Response"). While FINRA had been formed at the time of the submission of the NASD Response, for ease of reference the term NASD is used throughout.

<sup>10</sup> Pace.

<sup>11</sup> Canning, DiCarlo, Sacks, and Stein. See also NASD Response.

<sup>12</sup> Canning, DiCarlo, and Stein.

<sup>13</sup> *Id.*

<sup>14</sup> NASD Response.

<sup>15</sup> *Id.*

<sup>16</sup> Canning, DiCarlo, Sacks, and Stein.

<sup>17</sup> *Id.*

<sup>18</sup> NASD Response. NASD noted that "[t]he proposal will apply prospectively as to representation on or after the effective date. If a barred or suspended individual is representing a party in a case pending on the effective date of the rule, he or she may continue to serve on that case, but may not serve on new ones."

<sup>19</sup> Canning, DiCarlo, Sacks, and Stein.

<sup>20</sup> *Id.*

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-19536 Filed 10-2-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56564; File No. SR-ISE-2007-74]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, Relating to an Extension and Expansion of the Penny Pilot Program

September 27, 2007.

#### I. Introduction

On August 21, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("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 to extend and expand a pilot program to quote certain options in smaller increments ("Pilot Program" or "Pilot"). On August 22, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 29, 2007.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal

Currently, the six options exchanges, including ISE, participate in the thirteen class Pilot Program,<sup>5</sup> which is

scheduled to expire on September 27, 2007.<sup>6</sup> The Exchange proposes to extend and expand the Pilot Program to include fifty additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYSE); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.<sup>7</sup>

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase.<sup>8</sup> The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.<sup>9</sup>

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be \$0.01 for all quotations in option series that are quoted at less than \$3 per contract and \$0.05 for all quotations in option series that are quoted at \$3 per contract or greater. The QQQQs will continue to be quoted in \$0.01 increments for all options series.

During the extended and expanded Pilot Program, the ISE commits to

deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

#### III. Discussion

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.<sup>12</sup> In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.<sup>13</sup> All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.<sup>14</sup> The exchanges

<sup>23</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. 56306 (August 22, 2007), 72 FR 49753.

<sup>4</sup> See letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 ("Citadel Letter").

<sup>5</sup> The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ-100 Index Tracking Stock (QQQQ); Semiconductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD); Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFM); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

<sup>6</sup> The Pilot Program began on January 26, 2007 and is currently set to expire on September 27, 2007. See Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR-ISE-2007-68). See also Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62) ("Original Pilot Program Approval Order").

<sup>7</sup> This volume is based on the Options Clearing Corporation ("OCC") year-to-date trading volume data through July 16, 2007.

<sup>8</sup> The Exchange has committed to file a proposed rule change under section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.

<sup>9</sup> As proposed in its filing, ISE represents that options trading in penny increments will not be eligible for split pricing, as permitted under ISE Rule 716.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> PCX News Release, "Pacific Exchange to Trade Options in Pennies," June 28, 2005.

<sup>13</sup> Commission Press Release 2006-91, "SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting," June 7, 2006.

<sup>14</sup> See Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62); 55162 (January 24, 2007),