

have been prepared by the NASD. The NASD has designated this proposal as one concerned solely with the administration of the organization under § 19(b)(3)(A)(iii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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

The NASD is proposing to redesignate Rule 4623 that was approved by the SEC in Securities Exchange Act Release No. 38360 (March 4, 1997) with respect to Rule Filing SR-NASD-97-15, titled "Penalty Bids and Syndicate Covering Transactions," as Rule 4624.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section 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 SEC approved, effective March 4 and 14, 1997, amendments to the NASD rules regarding Corporate Financing, the Nasdaq Stock Market, Inc., and the OTC Bulletin Board that are designed to assist members in complying with SEC Regulation M.¹ The NASD is proposing to change the rule number of Rule 4623, that was approved by the SEC in Securities Exchange Act Release No. 38360 (March 4, 1997) with respect to Rule Filing SR-NASD-97-15, titled "Penalty Bids and Syndicate Covering Transactions," to Rule 4624. Rule 4623 was previously approved by the SEC in connection with SR-NASD-96-43 to designate a rule related to "Electronic Communications Networks" in connection with the Order Execution Rules.²

¹ Securities Exchange Act Release No. 38360 (March 4, 1997); Securities Exchange Act Release No. 38399 (March 14, 1997).

² Securities Exchange Act Release No. 38156 (January 10, 1997).

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act in that the proposed rule change will enforce and facilitate compliance by NASD members with the Securities Exchange Act Rules, in addition to compliance with the rules of the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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

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 concerns the administration of the organization in that it renumbers a rule, the rule change becomes effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(e) thereunder. In particular, the Commission believes the rule change makes a technical and clarifying change to an existing NASD rule. Accordingly, it neither significantly affects the protection of investors of the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 maybe 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-13227 Filed 5-20-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38635; File No. SR-NASD-97-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change To Amend the Damage Ceilings for Claims Under the Standard Arbitration and Simplified Arbitration Procedures

May 14, 1997.

I. Introduction

On March 27, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Code of Arbitration Procedure ("Code") of the NASD to: (1) Raise the ceiling for disputes to be eligible for resolution by a single arbitrator under simplified arbitration procedures from \$10,000 to \$25,000; and (2) raise the ceiling for disputes eligible for resolution by a single arbitrator under standard arbitration procedures from \$30,000 to \$50,000.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38466 (April 2, 1997), 62 FR 17273 (April 9, 1997). No comments were received on the proposal. The NASD

³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

subsequently filed Amendment No. 1, on May 5, 1997.³

II. Description

NASD Regulation, Inc. ("NASDR") is proposing to amend Rules 10202, Composition of Panels (formerly Section 9) and 10308, Designation of Number of Arbitrators (formerly Section 19)⁴ of the Code to establish the threshold for single arbitrator cases under standard arbitration at \$50,000. NASDR is also proposing to amend Rules 10203, Simplified Industry Arbitration (formerly Section 10) and 10302, Simplified Arbitration (formerly Section 13) of the Code to establish the threshold for simplified arbitrations at \$25,000. In addition, NASDR is proposing to amend each of those rules to state that the threshold amount is "exclusive of attendant costs and interest."

Under the proposed rule change to Rules 10302(d) and 10308(b), claims involving public customers and exceeding \$25,000, exclusive of attendant costs and interest, will be heard by a three member arbitration panel, rather than "a panel of no less than three and no more than five arbitrators." Under the proposed rule change to Rule 10302 (f) and (h)(3), the Director of Arbitration will "appoint," rather than "select," the public arbitrator for simplified arbitration. The original proposed rule change amended Rule 10308(a) to state that a majority of the arbitrators on a three member arbitration panel (for claims involving public customers under standard arbitration, that are less than or equal to \$50,000, but where a party or arbitrator requested a panel of three arbitrators) "shall be public arbitrators," rather than stating that a majority of the three arbitrator panel "shall not be from the securities industry." Amendment No. 1

³ Amendment No. 1 amends Section 10308(a) of the Code, Designation of Number of Arbitrators, to delete the change that states that a majority of the arbitrators appointed shall be public arbitrators, and retain the original language, that at least a majority of the arbitrators appointed shall not be from the securities industry. See letter from John Ramsay, Deputy General Counsel, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated May 2, 1997.

⁴ NASDR will shortly be filing a proposed rule change to amend Rule 10308 to implement the list selection process for the selection of arbitrators recommended by the NASD's Arbitration Policy Task Force. The list selection rule filing will further substantially amend Rule 10308, but will not be implemented until NASDR has developed the technology and procedures to administer the process and developed a pool of arbitrators sufficient to provide lists of arbitrators in accordance with the requirements of the rule. Accordingly, NASDR is amending Rule 10308 in the interim until the list selection rule is filed, approved and implemented.

deletes this change, returning to the original language that at least a majority of the arbitrators appointed "shall not be from the securities industry." The proposed rule change also includes several technical changes designed to correct inconsistencies in the rule language and which also were adopted by SICA.

III. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A of the Act⁵ in general and Section 15A(b)(6)⁶ in particular in that raising the thresholds for simplified arbitration and for standard arbitrations using a single arbitrator will permit such cases to be resolved more quickly and at lower cost to the parties, and is consistent with the NASD's longstanding goal of providing the investing public with a fair, efficient and cost-effective forum for the resolution of disputes. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 15A(b)(6) that NASD rules further investor protection and the public interest.⁷

The Commission believes that raising the arbitration thresholds to \$25,000 and \$50,000 is reasonable under the Act in that the change should serve to promote a more efficient allocation of resources and less expensive arbitration, while still providing adequate protection of investors and the public. The changes to the arbitration thresholds should result in a larger percentage of cases being resolved under the simplified arbitration procedure or the one arbitrator procedure under standard arbitration. This should result in a more efficient allocation of resources because the arbitrators whose attention and time would have been involved in those cases will now be able to hear other cases, resulting in a larger number of cases being heard. The threshold changes should also result in less expensive arbitration because the customer will not have to pay the costs attendant with three arbitrators or a

hearing⁸ (if they qualify for a decision on the pleadings and evidence).⁹

The Commission recognizes the NYSE and SICA's concerns, expressed by the NASD in its filing, that by setting the thresholds too high, a customer claimant's procedural rights under the Code could be disadvantaged in cases that have a significant economic value to the customer. However, the Commission believes that the change in the thresholds for simplified arbitration and single arbitrator standard arbitration, to \$25,000 and \$50,000 respectively, is adequate to protect against this concern and strikes an appropriate balance between protecting the investing public and promoting a more efficient and cost-effective forum to resolve disputes. The Commission notes that simplified industry arbitration provides for no fewer than one but no more than three arbitrators, and that simplified arbitration involving public customers provides for two additional arbitrators, upon the request of the arbitrator already appointed.¹⁰ Also, for standard public arbitration and standard industry arbitration under \$50,000, any party may request three arbitrators.¹¹

The Commission believes that the proposed rule change to Rules 10302(d) and 10308(b), stating that claims involving public customers and exceeding \$50,000, exclusive of attendant costs and interest, will be heard by a three member arbitration panel, rather than a panel of no less than three and no more than five arbitrators, is reasonable under the Act. This change should also promote greater efficiency and cost-effectiveness because these cases will now involve fewer arbitrators, whose time and attention will be available for other cases, and the customers will not have to bear the cost of up to five arbitrators. At the same time, this change will still provide adequate protection to public customers and a fair and efficient forum

⁸ Under the simplified arbitration procedures for matters between a public customer and an associated person or member, cases are resolved without a hearing (so-called "paper cases") by a single public arbitrator. A public customer may, however, demand a hearing, or the arbitrator may call a hearing, in which case the arbitrator will hold a hearing and the parties will have the benefit of all of the available forms of discovery. See Rule 10302.

⁹ The Commission notes that the NASD has stated that the arbitration fees will increase in some brackets, but that the increases would be larger in three arbitrator proceedings. Phone conversation between Elliot Curzon, NASD, Katherine England, Assistant Director, Market Regulation, Commission, and Heather Seidel, Attorney-Advisor, Market Regulation, Commission, on May 5, 1997.

¹⁰ See Rules 10203(a)(1) and 10302(i) of the Code.

¹¹ See Rules 10308(a) and 10202(b)(1) of the Code.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

for disputes because the claims will still be heard by three arbitrators.

The Commission believes that the proposed rule change to Rule 10302 (f) and (h)(3), where the Director of Arbitration will "appoint," rather than "select," the public arbitrator for simplified arbitration, is consistent with the Act in that it is not a substantive change; the Director of Arbitration will continue to be the individual who is responsible for choosing the arbitrator for these cases.¹²

As noted above, Amendment No. 1 amends Section 10308(a) of the Code, Designation of Number of Arbitrators, to delete the change in the original filing that states that a majority of the arbitrators appointed shall be public arbitrators, and retain the original language, that at least a majority of the arbitrators appointed shall not be from the securities industry. The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that this a non-substantive change in that it restores the rule to its original language and conforms the language with similar wording in Section 10308(b) of the Code. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

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 Commission's Public Reference Room. Copies of such filing also will be

¹² The Commission notes that the NASD has stated that it will implement this rule filing at the same time as a rule filing dealing with amendments to the arbitration fees, yet to be filed with the Commission. See letter from Elliot R. Curzon, Assistant General Counsel, NASDR, to Katherine England, Assistant Director, Market Regulation, Commission, dated May 5, 1997.

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-22 and should be submitted by June 11, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NASD-97-22), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-13229 Filed 5-20-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38632; File No. SR-NSCC-97-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Modify NSCC's Rules To Permit Unit Investment Trusts To Be Processed Through Fund/SERV, Networking, and Mutual Fund Commission Settlement Services

May 14, 1997.

On February 10, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-97-02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ to permit unit investment trust ("UITs") to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commission Settlement Services.² Notice of the proposal was published in the **Federal Register** on March 28, 1997.³ No comment letters were

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² These services collectively constitute NSCC's Mutual Fund Services. For a complete description of NSCC's Fund/SERV, Networking, and Mutual Fund Commission Services, refer to Securities Exchange Act Release Nos. 31937 (March 1, 1993), 58 FR 12609 [File No. SR-NSCC-92-14] (order approving proposed rule change regarding Fund/SERV system); 26376 (December 20, 1988), 53 FR 52546 [File No. SR-NSCC-88-08] (order approving Networking); and 31579 (December 17, 1992), 57 FR 60018 [File No. SR-NSCC-92-13] (order approving the Mutual Fund Commissions Settlement System and consolidating the Mutual Fund Commissions Settlement, Fund/SERV, and Networking Systems under NSCC's Mutual Fund Services).

³ Securities Exchange Act Release No. 38428 (March 21, 1997), 62 FR 14954.

received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Under the rule change, NSCC will permit UITs to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commission Settlement Services. Prior to the rule change, UITs were eligible for NSCC processing through NSCC's continuous net settlement ("CNS") system only.⁴ Because Mutual Fund Services only members (*i.e.*, primarily bank broker-dealers and insurance company subsidiaries) are not permitted access to NSCC's CNS system, they had to settle UIT trades ex-clearing with their UIT positions held with a trustee in book-entry form. The rule change will allow Mutual Fund Services only members to process and settle UIT trades through the Fund/SERV, Networking, and Mutual Fund Commission Settlement systems.

The settlement process for UIT transactions through NSCC's Mutual Fund Services will be processed the same as if these transactions were processed in the CNS system, but UIT transactions processed through the Mutual Fund Services will not be guaranteed. If a Mutual Fund Services only member wants its UIT transactions submitted to NSCC to be guaranteed, it must submit or have submitted on its behalf such transactions to NSCC's CNS system.

II. Discussion

Section 17A(b)(3)(F)⁵ provides that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the rule change is consistent with NSCC's obligations under the Act because it permits Mutual Fund Services only member to process UIT transactions within NSCC. By permitting UIT transactions to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund

⁴ A group of NSCC participants, bank trustees, and industry organizations such as the Securities Industry Association's Securities Operation Division, the Regional Municipal Operations Association, and National Unit Trust Association requested that NSCC permit UITs to be eligible for processing through its Fund/SERV, Networking, and Mutual Fund Commission Settlement Services.

⁵ 15 U.S.C. 78q-1(b)(3)(F).