

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-16 and should be submitted by April 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38466; File No. SR-NASD-97-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Damage Ceilings for Claims Under the Standard Arbitration and Simplified Arbitration Procedures

April 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items has been prepared by the self-regulatory organization. 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 Regulation, Inc. ("NASDR") is proposing 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.

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 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. The self-regulatory organization 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

In its January 1996 Report on Securities Arbitration Reform, the NASD's Arbitration Policy Task Force ("Task Force") recommended that the ceiling for cases eligible for resolution by a single arbitrator under simplified arbitration procedures should be raised from \$10,000 to \$30,000. The Task Force also recommended that the ceiling for cases eligible for resolution by a single arbitrator under standard arbitration procedures should be raised from \$30,000 to \$50,000. The Task Force recommended that these changes apply to all NASD arbitrations—public customer and intra-industry. The Task Force stated, and NASDR concurs, that raising the threshold, which will cause a larger percentage of cases to be resolved under the simplified arbitration procedures, will "strike an appropriate balance between the desire for faster and less expensive arbitration on the one hand and more expansive procedures on the other."¹

NASDR has consulted with the Securities Industry Conference on Arbitration ("SICA") and the New York Stock Exchange ("NYSE") on the appropriate threshold for simplified and single-arbitrator proceedings. While SICA and the NYSE agree with the Task Force's rationale, they are concerned that setting the threshold for simplified arbitrations too high could disadvantage customer claimants by limiting their procedural rights² under the Code in

cases that have significant economic value to the customer. In view of these concerns, NASD is instead proposing to set the threshold for simplified arbitration at \$25,000, instead of \$30,000. SICA approved of the adjusted thresholds at its October 17, 1996 meeting.

Accordingly, NASD is proposing to amend Rules 10202, Composition of Panels (former Section 9) and 10308, Designation of Number of Arbitrators (formerly Section 19)³ of the Code to establish the threshold for single arbitrator cases 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, NASD 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 proposed rule change amends Rule 10308(a) to state that a majority of the arbitrators on a three member arbitration panel (for claims 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." The proposed rule change also includes several technical changes designed to correct inconsistencies in the rule language and which were also adopted by SICA.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the

¹ See Report of the Arbitration Policy Task Force on Securities Arbitration Reform, at 73.

² 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. Under the standard arbitration procedures for all matters involving public customers, cases in which the claims are more than \$10,000 but less than \$30,000 may be heard by a single public arbitrator. These cases are not decided on the papers; rather, the arbitrator holds a hearing. However, any party may demand a three person panel. See Rule 10308.

³ 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 Task Force. The list selection rule filing will further substantially amend Rule 10308, but will not be implemented until NASD 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, NASD is amending Rule 10308 in the interim until the list selection rule is filed, approved and implemented.

¹⁹ 17 CFR 200.30-3(a)(12).

Act⁴ 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.

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

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

Within 35 days of the 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 the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 will also be 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 April 30, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38453; File No. SR-NSCC-97-3]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding Exemption Processing

March 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), notice is hereby given that on March 7, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 proposed rule change consists of modifications to NSCC's procedures regarding exemption processing in NSCC's Continuous Net Settlement ("CNS") system.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.¹

¹ The Commission has modified the text of the summaries submitted by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule change is to modify the methods of submitting exemptions under NSCC's procedures. As a part of the NSCC's CNS Accounting Operation, members may control the delivery of their securities to NSCC through the use of exemptions. CNS is an on-going accounting system that nets a member's securities obligations on a daily basis to produce a new short or long position in each issue.

A short position in CNS represents the quantity owed to NSCC by the member. To satisfy short positions for purposes of settlement, securities are delivered from the member's account at The Depository Trust Company ("DTC") to NSCC's account at DTC. These deliveries are subject to exemption limitations imposed by the member, which may elect to deliver to NSCC all, part, or none of any short position.

Exemptions assist members in complying with the segregation provisions of Rule 15c3-3 of the Act and in meeting other delivery needs. NSCC presently requires members to input exemption instructions on a daily basis. Currently, NSCC also permits but does not require members to input standing instructions.

In addition to submitting exemption instructions to NSCC, members may also manage their segregation and delivery needs through the use of DTC's "Memo Segregation" facility. Since a member may either use NSCC's or DTC's systems to control delivery requirements, the proposed rule change will no longer mandate that exemption instructions be submitted to NSCC every day.

If a daily instruction is not submitted, not received, or is received but cannot be processed by NSCC, the member's standing exemption instructions will be used. As a result, members will now be required to submit standing exemption instructions to NSCC since they will serve as the member's default instructions under the proposed procedures.

(2) The proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate clearance and settlement of securities transactions and in general protect investors and the public interest.

⁴ 15 U.S.C. § 78o-3.