

the proposed rule change permits the approval of research reports by a supervisory analyst approved pursuant to NYSE Rule 344 in limited circumstances and according to standards comparable to current NASD requirements, the Commission believes that the proposed rule change preserves the investor protection goals of the NASD principal review requirement rules and eliminates duplicative regulatory requirements.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁰ that the proposed rule change (SR-NASD-98-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40103; File No. SR-NASD-98-04]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Mandatory Arbitration of Claims Involving Exempted Securities.

June 19, 1998.

I. Introduction

On January 27, 1998, 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 interpretation of the NASD's Code of Arbitration Procedure ("Code") such that all claims relating to transactions in exempted securities, including government and municipal securities, may be submitted to the Office of Dispute Resolution ("Office") for arbitration under the Code without limitation. Accordingly, when such claims arise involving public customers, Rule 10301 of the code will require member firms and associated

persons to arbitrate them at the request of the customer. In addition, when such claims arise between members and other members or associated persons, Rule 10201 (which governs intra-industry disputes) will require them to be arbitrated at the request of one of the parties. Finally, when such claims arise between a member firm and a customer, customers can be required under the terms of a predispute arbitration agreement to arbitrate the claims.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39880 (April 16, 1998), 63 FR 20230 (April 23, 1998). No comments were received on the proposal.

II. Description

Since at least 1989, the Office had declined to accept claims for mandatory arbitration involving transactions in government securities naming member firms that were registered solely under Section 15C of the Act as government securities broker/dealers.³ By contrast, if a claim involves a government securities transaction by a general securities broker/dealer member firm, the Office will accept the claim for mandatory arbitration. If the claim involves a municipal securities transaction by a member firm,⁴ the Office will accept the claim for arbitration.⁵ In addition, the

³ Section 15C of the Act, 15 U.S.C. 78o-5, governs the registration of government securities broker/dealers. Since 1986, when Section 15C was adopted as part of the Government Securities Act, government securities broker/dealers have been required to become members of an exchange or the NASD.

⁴ Section 15B of the Act, 15 U.S.C. 78o-4, governs the registration of municipal securities dealers. Municipal securities dealers are not required to become members of an exchange or the NASD. Nevertheless, some NASD members which are engaged in a general securities business are registered as municipal securities dealers, and some firms which are exclusively municipal securities dealers have become members of the NASD.

⁵ The NASD previously asked claimants in these cases if they wanted the claim referred to the Municipal Securities Rulemaking Board ("MSRB") for arbitration. However, the Commission recently approved an MSRB proposed rule change terminating the MSRB's arbitration program and requiring the financial institutions that are subject to its rules to submit to arbitration in the NASD's forum as if they were NASD members. See Securities Exchange Act Release No. 39378 (December 1, 1997), 62 FR 64417 (December 5, 1997). The Commission believes that compelling NASD members to arbitrate municipal securities claims would be consistent with the intent of the MSRB's rule filing eliminating its arbitration program and sending its arbitration cases to the NASD. The Commission notes that NASD members engaged in municipal securities transactions already are required to arbitrate their claims because they are either general securities broker/dealers that are otherwise required to arbitrate all of their other claims, or because they voluntarily became NASD members. The Commission notes

Office will accept claims where both parties agree to submit the claim to arbitration.

Rule 10101 of the Code provides that disputes "arising out of or in connection with the business of any member" are eligible for submission to arbitration under the Code. The definition of "investment banking or securities business" in Article I, paragraph (l) of the By-Laws means "the business carried on by a broker, dealer, or municipal securities dealer * * *." Rule 10301(a) provides that eligible disputes "arising in connection with the business of [a] member or in connection with the activities of [an] associated person" must be arbitrated pursuant to any enforceable arbitration agreement or upon the demand of a customer. While these rules (and the definition) sweep in a very broad range of disputes, Rule 10301(b) permits the Office to decline to arbitrate certain matters.

In reliance on Rule 10301(b), and the NASD's limited regulatory jurisdiction over government securities-only member firms the Office has for many years declined to accept for arbitration claims that involved transactions in government securities by member firms engaged only in activities involving government securities unless both parties voluntarily agreed to submit the claim. The Office's position means that these claims cannot be compelled into arbitration under either a demand for arbitration or a predispute arbitration agreement. The Office's decision to decline to mandate arbitration of government securities claims was based on the following rationale: (1) the NASD only regulated the exempted securities activities of member firms to the limited extent permitted in Section 15A(f)(2) of the Act; and, (2) the subject matter jurisdiction of the arbitration forum should not be significantly different from the NASD's regulatory jurisdiction over its members and associated persons.

In response to the passage of the Government Securities Act Amendments of 1993, which amended Section 15A(f)(2) of the Act and granted the NASD the authority to regulate broadly the business practices of members with respect to government securities,⁶ NASD Regulation amended its rules to consolidate the Government Securities Rules it had adopted pursuant to Section 15A(f)(2) of the Act with its more generally applicable

that this filing does not affect the arbitration of municipal securities.

⁶ The NASD is still barred from establishing regulations covering the municipal securities activities of broker/dealers; that authority is reserved to the MSRB.

to Heidi Pilpel, Special Counsel, Division of Market Regulation, on May 12, 1998.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Conduct Rules. NASD Regulation now regulates the activities of members engaged in government securities activities that are both general securities broker/dealers and limited purpose government securities broker/dealers.

Under the new policy, a member that is registered solely as a government securities broker/dealer and that has a dispute with a customer over a transaction in exempted securities shall be required to submit the dispute to arbitration upon the demand of the customer.⁷ Such disputes also may be compelled to arbitration pursuant to a valid predispute arbitration agreement. Intra-industry disputes involving exempted securities also will be subject to mandatory arbitration upon the request of one of the parties.

NASD Regulation also believes the policy should permit any claim involving exempted securities to be submitted for arbitration without regard to when the transaction occurred; however, if more than six years have elapsed from the transaction, occurrence, or event giving rise to the claim, under Rule 10304 of the Code, the claim will not be eligible for submission to arbitration.⁸ All claims involving general securities broker/dealers will continue to be accepted for arbitration consistent with past practice. Claims previously submitted that the Office has already declined to arbitrate under the old policy cannot be resubmitted under the new policy.

III. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁹ in that eliminating a barrier to the arbitration of disputes involving exempted securities will allow public customers and members access to the arbitration forum for the resolution of such disputes. The Commission believes it is reasonable, given the broadening of NASD Regulation's regulatory jurisdiction over government securities and the recent adoption of amendments to the NASD's rules in recognition of the broader jurisdiction,¹⁰ for NASD

Regulation to amend its arbitration policy to include claims involving government securities by members engaged exclusively in exempted securities activities¹¹ within the scope of those claims that are subject to mandatory arbitration under the Code.¹²

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NASD-98-04) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice #2843]

Determination on Export-Import Bank Support for the Sale to Venezuela of Defense Articles or Services To Be Used Primarily for Counter-Narcotics Purposes

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, and Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, I hereby determine that:

(1) The defense articles and services for which the Government of Venezuela has requested Export-Import Bank financial guarantees, parts and services for the refurbishment of seventeen (17) OV-10 aircraft, are being sold primarily for anti-narcotics purposes;

(2) the sale of such defense articles and services would be in the national interest of the United States;

(3) The requirement for a determination that the Government of Venezuela has complied with all restrictions imposed by the United States on the end-use of defense articles or services for which the Export-Import Bank has provided guarantees or

consolidation of its Government Securities Rules into the Conduct Rules, ending the regulatory distinction between the activities of general securities broker/dealers and government securities broker/dealers. See Securities Exchange Act Release No. 37588 (August 20, 1996) 61 FR 44100 (August 27, 1996).

¹¹ As noted above, general securities broker/dealers are already required to arbitrate all their claims, including those involving government securities.

¹² As required by Section 19(b)(5) of the Act, the Commission has consulted with the Treasury Department on this proposal.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

insurance under section 2(b)(6) of the Export-Import Bank Act is inapplicable because the pending financing will be the first Ex-Im Bank transaction with Venezuela made under section 2(b)(6) of the Act;

(4) the requirement for a determination that the Government of Venezuela has not used defense articles or services for which the Export-Import Bank has provided guarantees or insurance under section 2(b)(6) of the Export-Import Bank Act to engage in a consistent pattern of gross violations of internationally recognized human rights is inapplicable because the pending transaction will be the first Ex-Im Bank transaction with Venezuela made under section 2(b)(6) of the Act.

The determination shall be reported to Congress and shall be published in the **Federal Register**.

Dated: June 12, 1998.

Strobe Talbott,

Acting Secretary of State.

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DEPARTMENT OF STATE

[Public Notice No. 2842]

United States International Telecommunications Advisory Committee (ITAC) Development Sector (ITAC-D); Notice of Meeting

The Department of State announces a meeting, under the International Telecommunications Advisory Committee (ITAC), of Study Groups 1 and 2 of the Telecommunications Development Sector (ITAC-D). The meeting will be held on Wednesday, July 8, 1998, 10:00 a.m.-12:00 noon, in Room 1207 of the Department of State, 2201 "C" Street, NW., Washington, DC.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. The purpose of this meeting is to develop U.S. positions for the upcoming ITU-D meetings. The meeting agenda will include preparation for planned ITU-D meetings of Study Group 1 (Telecommunications & Development Strategies and Policies) and Study Group 2 (Development, Harmonization, Management and Maintenance of Telecommunication Networks and Services, including Spectrum Management). Questions regarding the agenda or ITAC-D Sector activities in general may be directed to Doreen

⁷ NASD Regulation notes that few government securities claims involving public customers have been filed or attempted to be filed with the Office. Most of the claims involving government securities have involved member-to-member claims.

⁸ NASD Regulation proposed an amendment to Rule 10304, rule filing SR-NASD-97-44, pending approval with the SEC. Under the proposed rule change all claims are presumed to be eligible; however, the presumption could be overcome if the respondent challenges the claim on the basis that more than six years have elapsed since the act or occurrence giving rise to the claim.

⁹ 15 U.S.C. 78o-3.

¹⁰ In Notice to Members 96-66, published in October 1996, the NASD announced the