

Dated: April 14, 2004.

**Dana Gioia, Chairman,**

*National Endowment for the Arts.*

[FR Doc. 04-9090 Filed 4-21-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act; Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 69 FR 20954, April 19, 2004.

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Tuesday, April 20, 2004, at 10:30 a.m.

**CHANGE IN THE MEETING:** Deletion of Item/Additional Item.

The following item was not considered during the Closed Meeting on April 20, 2004: An adjudicatory matter.

The following item was added to the Closed Meeting of April 20, 2004: Litigation matter.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: April 20, 2004.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-9343 Filed 4-20-04; 3:59 pm]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 26, 2004: An Open Meeting will be held on Wednesday, April 28, 2004 at 2:30 p.m. in Room 6600. A Closed Meeting will be held on Thursday, April 29, 2004 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Open Meeting scheduled for Wednesday, April 28, 2004 will be:

1. The Commission will consider whether to propose new rule 202(a)(11)-2 under the Investment Advisers Act of 1940 ("Advisers Act"). The proposed rule would except thrift institutions from the Advisers Act when they provide investment advice (1) as trustee, executor, administrator, or guardian to trusts, estates, guardianships or other fiduciary accounts and (2) to their collective trust funds that are excepted from the Investment Company Act of 1940. The Commission will also consider whether to propose new rule 12g-6 under the Securities Exchange Act of 1934 to exempt thrift-sponsored collective trust funds from registration and reporting requirements under that Act.

For further information, please contact Robert Tuleya, Attorney, Division of Investment Management, at (202) 942-0719.

2. The Commission will consider whether to propose new and amended rules and forms to address the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). The proposals relate to four primary regulatory areas: Securities Act registration; disclosure requirements; communications during the offering process; and ongoing reporting under the Exchange Act.

For further information, please contact Jeffrey J. Minton, Special Counsel, or Jennifer G. Williams, Attorney-Advisor, Office of Rulemaking, Division of Corporation Finance, at (202) 942-2910.

3. The Commission will consider whether to adopt rule amendments and new rules under the Securities Exchange Act of 1934 ("Exchange Act") that would establish two separate voluntary regulatory programs for the Commission to supervise broker-dealers and their affiliates on a consolidated basis.

One program would establish an alternative method to compute certain net capital charges for broker-dealers that are part of a holding company that manages risks on a group-wide basis and whose holding company consents to group-wide Commission supervision. The broker-dealer's holding company and its affiliates, if subject to Commission supervision, would be referred to as a "consolidated supervised entity" or "CSE." Under the alternative capital computation method, the broker-dealer would be allowed to compute certain market and credit risk capital charges using internal mathematical models. The CSE would be required to comply with rules regarding its group-wide internal risk management control system and would be required periodically to provide the Commission with consolidated computations of allowable capital and risk allowances (or other capital assessment) prepared in a form that is consistent with the Basel Standards. Commission supervision of the CSE would include recordkeeping, reporting, and examination requirements. The requirements would be modified for an entity with a principal regulator.

The other program would implement section 17(i) of the Exchange Act, which created a new structure for consolidated supervision of holding companies of broker-dealers, or "investment bank holding companies" ("IBHCs") and their affiliates. Pursuant to the Exchange Act, an IBHC that meets certain, specified criteria may voluntarily register with the Commission as a supervised investment bank holding company ("SIBHC") and be subject to supervision on a group-wide basis. Registration as an SIBHC is limited to IBHCs that are not affiliated with certain types of banks and that have a substantial presence in the securities markets. The rules would provide an IBHC with an application process to become supervised by the Commission as an SIBHC, and would establish regulatory requirements for those SIBHCs. Commission supervision of an SIBHC would include recordkeeping, reporting and examination requirements. Further, the SIBHC also would be required to comply with rules regarding its group-wide internal risk management control system and would be required periodically to provide the Commission with consolidated computations of allowable capital and risk allowances (or other capital assessment) consistent with the Basel Standards.

Both programs would also include technical and conforming amendments to the risk assessment rules (Exchange Act Rules 17h-1T and 17h-2T).

For further information, please contact Lourdes Gonzalez at (202) 942-0098, Linda Stamp Sundberg at (202) 942-0073, Bonnie Gauch at (202) 942-0765, Rose Wells at (202) 942-0143, or Matt Comstock at (202) 942-0156.

The subject matter of the Closed Meeting scheduled for Thursday, April 29, 2004 will be:

- Formal orders of investigation;
- Institution and settlement of injunctive actions;

- Institution and settlement of administrative proceedings of an enforcement nature;

- Consideration of amicus participation; an adjudicatory matter; and an Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: April 20, 2004.

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 04-9344 Filed 4-20-04; 3:59 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49573; File No. SR-NASD-2003-95]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change Relating to Arbitrator Classification and Disclosure in NASD Arbitrations

April 16, 2004.

#### I. Introduction

On June 12, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 amend certain sections of the NASD Code of Arbitration Procedure ("Code") relating to arbitrator classification and disclosure in NASD arbitrations. The proposed rule change was published for comment in the **Federal Register** on August 21, 2003.<sup>3</sup> The Commission received eight comment letters on the proposal.<sup>4</sup>

NASD submitted two letters in response to these comments.<sup>5</sup> This order approves the proposed rule change.

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

Under the proposal, Rules 10308 and 10312 of the Code would be amended to: (1) Modify the definitions of public and non-public arbitrators; (2) provide specific standards for deciding challenges to arbitrators for cause; and (3) clarify that compliance with arbitrator disclosure requirements is mandatory.

Specifically, the proposed rule change would amend the definition of non-public arbitrator in Rule 10308(a)(4) of the Code to: (1) Increase from three years to five years the period for transitioning from an industry to public arbitrator; and (2) clarify that the term "retired" from the industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the proposed rule change would amend the definition of public arbitrator in Rule 10308(a)(5)(A) of the Code to: (1) Prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how many years ago the association ended; (2) exclude from the definition of public arbitrator, attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator; and (3) provide that investment advisers may not serve as public arbitrators and may only serve as non-public arbitrators if they otherwise qualify under Rule 10308(a)(4) of the Code. The proposed rule change would also amend the definition of "immediate family member" in Rule 10308(a)(5)(B)

2003 ("O'Donnell Letter"); Cliff Palefsky, Co-Chair, ADR Committee, National Employment Lawyers Association ("NELA"), dated September 9, 2003 ("NELA Letter"); Stephen G. Sneeringer, Senior Vice President and Counsel, A.G. Edwards & Sons, Inc., dated September 9, 2003 ("A.G. Edwards Letter"); Edward Turan, Chair, Securities Industry Association ("SIA") Arbitration Committee, SIA, dated September 11, 2003 ("SIA Letter"); Charles W. Austin, Jr., Vice-President/President Elect, Public Investor Arbitration Bar Association ("PIABA"), dated September 11, 2003 ("PIABA Letter"); James Dolan, Attorney and Counselor, dated October 8, 2003 ("Dolan Letter"); and Richard P. Ryder, President, Securities Arbitration Commentator, Inc. ("SAC"), dated October 23, 2003 ("SAC Letter"). See also e-mail to [rules-comments@sec.gov](mailto:rules-comments@sec.gov) from [ProfLipner@aol.com](mailto:ProfLipner@aol.com) dated September 23, 2003 ("Lipner Letter").

<sup>5</sup> See letters to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, from Laura Ganzler, Counsel, NASD, dated September 30, 2003 and February 2, 2004 ("NASD's Response").

of the Code to add parents, children, stepparents, stepchildren, as well as any member of the arbitrator's household.

The proposed rule change would also amend Rules 10308(d) and 10312(d) of the Code to provide that a challenge for cause will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. In addition, the proposal would amend Rule 10308 of the Code to add a new paragraph (f) which would provide that close questions regarding arbitrator classification or challenges for cause brought by a public customer would be resolved in favor of the customer. Lastly, NASD proposed to amend Rule 10312(a) and (b) of the Code to clarify that arbitrators must disclose the required information and must make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary.

#### III. Summary of Comments

As noted above, The Commission received eight comment letters on the proposal.<sup>6</sup> NASD submitted two letters in response to these comments.<sup>7</sup>

PIABA supported the proposal as a "positive and significant step toward the elimination of the appearance of pro-industry bias in the roster of those eligible to sit as 'public' arbitrators in NASD arbitrations."<sup>8</sup> PIABA, however, suggested that NASD consider further steps, such as eliminating all banking and insurance personnel from the public arbitrator pool, and categorizing all professional partners of all non-public arbitrators as non-public regardless of whether the partner's firm meets the proposed 10% threshold under Rule 10308(a)(5)(A)(iv) of the Code.<sup>9</sup>

Some commenters believed that the proposed amendments to Rule 10308(a)(5)(A)(iv) of the Code to classify as non-public arbitrators an attorney, accountant or other professional whose firms derived more than 10 percent of its revenue from the industry in the last two years from securities industry clients is too lenient and should go farther.<sup>10</sup> NELA suggested that attorneys whose firm represent industry members

<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. 48347 (August 14, 2003), 68 FR 50563.

<sup>4</sup> See letters to Jonathan G. Katz, Secretary, Commission, from Joseph O'Donnell, dated July 16,

<sup>6</sup> See *supra* note 4.

<sup>7</sup> See *supra* note 5.

<sup>8</sup> See PIABA Letter.

<sup>9</sup> See PIABA Letter.

<sup>10</sup> See NELA Letter, PIABA Letter.