

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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-95-8 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35847; File No. SR-NASD-95-20]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Failure to Honor Settlement Agreements Obtained in Connection With an Arbitration or Mediation**

June 14, 1995.

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 June 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>5</sup> 17 CFR 200.30-3(a)(12)

<sup>1</sup> The NASD originally submitted the proposed rule change on May 10, 1995. The NASD subsequently submitted two minor technical amendments, the text of which may be examined in the Commission's Public Reference Room. See Letters from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (May 16, 1995 and June 9, 1995). This notice reflects those amendments.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing to amend the Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure ("Resolution") to make the following acts a violation of Article III, Section 1 of the Rules of Fair Practice: (a) A failure to honor a written and executed settlement agreement obtained in connection with an arbitration conducted under the auspices of a Self-Regulatory Organization ("SRO"); and (b) a failure to honor a written and executed settlement agreement obtained in connection with a mediation conducted under the auspices of the NASD. The instant filing also proposes to amend Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

**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 NASD 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 NASD 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. Enforcing Settlement Agreements**

In connection with the administration of its arbitration program the NASD states that many disputes or claims for damages submitted to arbitration before the NASD, or another SRO forum or the American Arbitration Association ("AAA"), are settled prior to a hearing on the merits. In addition, the NASD is currently developing a mediation program, to be administered in connection with the arbitration program, where parties will be participating in a process that the NASD believes will increase the number of

claims that are settled prior to a hearing.<sup>2</sup>

The NASD also notes that occasionally members and persons associated with members fail to comply with settlement agreements reached in connection with arbitration proceedings. These settlements may have been reached prior to the hearing on the matter and, as a result, the hearing is canceled only to be rescheduled following a party's failure to honor the settlement. In other cases, matters are settled and claims withdrawn only to be refiled later after a member or associated person fails to honor the agreement.

The NASD is concerned that a failure by a member or associated person to honor a settlement agreement imposes substantial added costs on the prevailing party or parties in the form of delayed recoveries, actions to enforce the agreements and additional fees connected with short-notice cancellation of hearings. The NASD's Arbitration Department also incurs additional costs in rescheduling hearings, and on occasion has had to appoint new arbitrators to hear a matter. In addition, the NASD believes that the credibility of the arbitration process suffers if members and their associated persons are able to delay the resolution of a dispute by failing to honor a settlement agreement.

The Resolution states that "it may be deemed \* \* \* a violation of Article III, Section 1 of the Rules of Fair Practice for a member or person associated with a member to \* \* \* fail to honor an [arbitration] award \* \* \*." The Resolution was adopted in 1973 and has been used to discipline members and associated persons who fail to pay an arbitration award unless they have moved to vacate the award.<sup>3</sup> The Resolution applies to awards rendered in NASD arbitrations, as well as arbitrations sponsored by other SROs and the AAA.

The NASD believes that the failure by a member or associated person to honor a settlement agreement entered into in connection with an arbitration proceeding or a mediation should have the same consequences as the failure to pay an arbitration award. Therefore, the NASD is proposing to amend the Resolution to make the failure by a member or associated person to honor a written and executed settlement

<sup>2</sup> The NASD has separately submitted a proposed rule change relating to the establishment of a Mediation Program. See Securities Exchange Act Release No. 35830 (June 9, 1995).

<sup>3</sup> Under the Federal Arbitration Act and many state statutes such a motion to vacate must be filed within 90 days after the award is rendered.

agreement actionable as a violation of Article III, Section 1 of the Rules of Fair Practice. The amendment is limited to settlement agreements that have been reduced to writing and have been executed. The amendment, therefore, will not encompass unexecuted settlements.

## 2. Use of Revocation Procedures

In 1993, the NASD amended Article VI, Section 3 of the By-laws to specify that a membership or registration could be suspended or cancelled on fifteen (15) days notice for failing to honor an arbitration award rendered in an NASD arbitration. The use of such an expedited or "revocation" proceeding was limited to awards in NASD sponsored proceedings because the NASD's oversight of the arbitration process provided greater assurance about the awards that would be enforced in such proceedings.<sup>4</sup>

The NASD believes that the failure by a member or an associated person of a member to honor settlement agreements entered into in connection with an arbitration proceeding or mediation sponsored by the NASD should be subject to the same revocation proceedings as are arbitration awards. Accordingly, the NASD is also proposing to amend Article VI, Section 3 of the By-Laws to specify that membership or registration can be suspended or cancelled on fifteen (15) days notice for failing to honor a settlement agreement obtained in connection with an NASD arbitration or mediation. The action of the NASD under Article VI, Section 3 of the By-Laws with respect to failure to honor settlement agreements will be conducted as a revocation proceeding pursuant to the provisions of Article VI of the Code of Procedure, which provides an opportunity for review of the NASD's action upon written request of the member or associated person.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>5</sup> in that forcing members or associated persons of a member to abide by settlement agreements entered into in

compromise of a dispute pending in arbitration or mediation will enhance the effectiveness of arbitration and mediation as alternative dispute resolution forums and eliminate the unfair impact and waste of resources experienced by the public, other litigants and the arbitration/mediation forum that results from the failure to honor a settlement agreement.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD 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

Within 35 days of the date of 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 such 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 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 file number SR-NASD-95-20 and should be submitted by July 11, 1995.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-14979 Filed 6-19-95; 8:45 am]

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[Rel. No. IC-21135; 812-9616]

## National Equity Trust, et al.; Notice of Application

June 14, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** National Equity Trust and Prudential Securities Incorporated ("Prudential").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 17(b) of the Act that would exempt applicants from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust.

**FILING DATE:** The application was filed on May 26, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1995 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Prudential Securities Incorporated, Unit Trust Department, One New York Plaza, New York, New York 10292, Attn.: Kenneth Swankie.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Robert A. Robertson,

<sup>4</sup> Revocation proceedings initiated under Article VI, Section 3 of the By-Laws are conducted pursuant to Article VI of the NASD's Code of Procedure. As such they are subject to review by a hearing panel upon request of the member or associated person. The use of Article VI of the Code of Procedure for such proceedings was initiated in connection with the NASD's adoption of an amendment to Article VI, Section 3 of the By-Laws relating to failure to pay arbitration awards. See, SR-NASD-91-73, approved by the SEC in Securities Exchange Act Release No. 31763 (January 28, 1993).

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 17 CFR 200.30-3(a)(12).