3. The Funds will hold meetings of shareholders to vote on approval of the Interim Agreements and new investment advisory agreements, on or before the 120th day following July 3, 1995.

4. PMC will bear the cost of preparing and filing this application and the costs relating to the solicitation of the approvals of the Funds' shareholders of the Interim Agreements necessitated by the Reorganization.

5. PMC will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services under the Interim Agreements, PMC will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independent Directors, are satisfied that the services provided by PMC will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18287 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35990; File No. SR-NASD–95–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mediation of Disputes

July 19, 1995.

On June 6, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2], and Rule 19b–4 thereunder.[3] The proposed rule change amends the Code of Arbitration Procedure (''Code'')[4] by adding a new Part IV to set forth rules to govern the administration of mediation proceedings (''Mediation Rules'') and by amending Sections 37, 43 and 44 of the Code[5] to add fee and other provisions relating to the administration of mediation proceedings.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35830, June 9, 1995) and by publication in the **Federal Register** (60 FR 31522, June 15, 1995). No comment letters were received. This order approves the proposed rule change.

More than 5,500 arbitration cases were filed with the NASD in calendar year 1994, which represents 82 percent of all securities arbitrations filed in all arbitration for a combined (including the American Arbitration Association) and 86 percent of all arbitrations filed with self-regulatory organizations. The volume of arbitration cases has been growing dramatically since the U.S. Supreme Court recognized the enforceability of predispute arbitration agreements with respect to claims arising under the Act[6] and under the Securities Act of 1933.[7]

As the volume of arbitrations has increased, cases have grown more complex and time-consuming such that some of the advantages of arbitration as a low cost and swift alternative to litigation are disappearing. This has led to interest in other forms of alternative dispute resolution that may be less expensive than adversarial proceedings in arbitration or in court. A goal of mediation is to explore and come to a settlement of an outstanding dispute without resort to adversarial adjudication.

Amendments to Existing Rules

Record of Sessions. Section 37 of the Code has been amended by adding a new paragraph (b) to prohibit keeping a verbatim record of any mediation session conducted pursuant to the proposed rules. The NASD believes that a verbatim record is not consistent with the methods of mediation: a free-flowing and confidential exchange of views, opinions, proposals and admissions.

Fees. Sections 43 and 44 of the Code have been amended to include fees for NASD mediation sessions. The administrative fees of the NASD set forth in new Subsection 43(i) and 44(j) for administering a mediation will be charged only when there is no Association arbitration pending. When there is no arbitration pending, the NASD will charge each party $150 under new Subsection 43(i) to administer the mediation of a public customer matter and will charge each party $250 under new Subsection 44(j) to administer the mediation of an industry matter.

The fees will be assessed for each matter submitted to mediation. Pursuant to new Section 51, discussed below, a matter is deemed submitted to mediation when the Director of Mediation[8] has received an executed mediation Submission Agreement from all parties.[9]

In addition, new Subsections 43(j) and 44(k) obligate the parties to pay all of the mediator's charges, including travel and other expenses. The Submission Agreement will set forth the mediator's charges and these charges will be apportioned equally among the parties unless they agree otherwise. The NASD will estimate initially the mediator's charges based on the anticipated length of the session or sessions. The parties will be required to deposit their proportional share of such estimated charges with the NASD prior to the first mediation session.

The NASD's standard mediator charges will be $150 per hour, although the parties may agree to pay different charges for a particular mediator. The NASD intends to make its best efforts to make mediators available at the specified hourly rate; however, some qualified mediators may decline to serve unless compensated at a higher rate.

Finally, the mediator's hourly fee for joint sessions (except for the first session) and separate sessions will be assessed for each half hour or portion thereof. In addition, the mediator's hourly rate for separate meetings will be apportioned equally among all parties without regard to the actual amount of time each party has spent with the mediator because all parties should benefit equally from the mediator's efforts in meeting with each party even if the mediator spends more time with one than the other.

---

[1] The NASD amended the proposed rule change subsequent to its original filing on May 19, 1995. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (June 2, 1995).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶3701 *et seq.*

[5] NASD Manual, Code of Arbitration Procedure, Part III, Secs. 37, 43 and 44, (CCH) ¶¶3737, 3743, 3744.

[6] *Shearson/American Express, Inc.* v. *McMahon,* 482 U.S. 220 (1987).

[7] *Rodriguez de Quijas* v. *Shearson/American Express, Inc.* 490 U.S. 477 (1989).

[8] New Section 50 provides for the appointment of a Director of Mediation (''Director'') to administer mediations. See infra text accompanying n. 10.

[9] The NASD is developing a standard form mediation Submission Agreement. A copy of the Submission Agreement will be provided to all parties.

Mediation Rules

General Scope and Authority. New Section 50 establishes the scope and authority of the Mediation Rules. This Section provides that the Mediation Rules will apply to mediations administered by the Association and calls for the designation of a Director to administer mediations. Section 50 also specifies that the Director will consult the National Arbitration Committee (''Committee'') on administering the NASD mediation program. The Committee, as necessary, may make recommendations concerning the administration of the mediation program to the Director and recommend amendments to the rules to the NASD Board, Finally, Section 50 states that neither any mediator nor the NASD shall have any authority to compel a party to submit to mediation or to settle a matter. This last provision is intended to clarify the voluntary nature of mediation.[10]

Submission of Eligible Matters. New Section 51 provides that any matter, or part of a matter (such as procedural issues), eligible for arbitration under the Code may be mediated. The Director has the sole authority to determine the eligibility of any particular matter for mediation. New Section 51 also provides that a matter will be deemed submitted when the Director has received an executed mediation Submission Agreement from each party. The submission of a matter will trigger the obligation to pay applicable fees and will trigger the NASD's activities in finding a mediator and making arrangements for facilities for the mediation.

As noted above, the NASD has stated that it intends to solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits and explore whether mediation might meet the needs of the parties. Parties may volunteer to mediate a matter even if the Director has not solicited indications of interest in mediation. If a party expresses interest in mediating a matter, the Director will seek commitments to participate from other parties. If commitments are obtained from all parties, either orally or in writing, the Director will forward a mediation Submission Agreement to the parties for execution.

Stay or Delay of Arbitration Pending Mediation. New Section 52 provides that any arbitration pending at the time of a mediation will not be stayed or delayed unless the parties agree. This provision is intended to prevent gamesmanship through the use of mediation as a delaying tactic.

Mediator Selection. New Section 53 provides for the appointment of mediators and permits parties to select a mediator from a list supplied by the Director, or to obtain, on their own, a non-NASD mediator. If the parties do not act to select a mediator, the Director will assign a mediator. The parties also will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Section 53 also requires mediators to comply with the same background disclosure requirements as arbitrators.[11]

Finally, new Subsection 53(c) prohibits a mediator from serving as an arbitrator or from representing any party to a mediation in any subsequent arbitration proceeding relating to the subject matter of the mediation. A mediator functions as a third party neutral who assists parties in exploring the strengths and weaknesses of their case. Mediation can function effectively only if parties can fully trust the mediator to provide impartial guidance and not to divulge confidential information disclosed. Parties are unlikely to trust a mediator if that mediator is permitted to serve as an arbitrator or represent a party to a mediation in a subsequent adversarial proceeding relating to the subject matter of the mediation. With respect to judicial proceedings, state law, attorney codes of ethics, and mediator codes of conduct[12] should provide sufficient protection for parties in judicial forums.

Liability Limitation. New Section 54 provides for the limitation of liability of mediators, the Association, and its employees, for any act or omission in connection with a mediation administered by the NASD under the rules.

Ground Rules. New Subsection 55(a) states that Section 55 sets forth standard Ground Rules governing mediations and permits the parties to amend any of the Ground Rules at any time. The Subsection also provides that the Ground Rules are intended to be standards of conduct for the parties and for the mediation. Parties will be able to tailor the ground rules governing their mediation to meet their needs.

New Subsection 55(b) states that mediation is voluntary and that parties may withdraw from a mediation at any time prior to the execution of a settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director. This provision is intended to clarify that, while the goal of mediation is to explore and settle outstanding disputes, if possible, the proposed rules are process oriented, not result oriented. Mediation is wholly voluntary and any party may withdraw from a mediation at any time and for any reason, or for no reason at all.

New Subsection 55(c) establishes that the mediator's role is to act as a neutral and impartial facilitator, without authority to impose decisions or a settlement on the parties.

New Subsection 55(d) requires that the parties and their representatives meet jointly with the mediator, in person or by conference call as determined by the mediator or by mutual agreement of the parties. The mediator will facilitate through joint sessions, caucuses and/or other means, discussions between the parties on the subject matter of the mediation.

New Subsection 55(d) also provides that the mediator will determine the procedure for the mediation. Under this subsection, parties would agree to cooperate with the mediator in conducting the mediation expeditiously, to make reasonable efforts to be available for mediation sessions, and to be represented at all sessions either in person or by a representative with authority to settle the matter. This subsection is intended to avoid common obstacles to expeditious, effective mediation and it sets forth rules that are intended to prevent gamesmanship and discourage dilatory conduct.

New Subsection 55(e) permits the mediator to meet with and communicate separately with each party, provided the mediator notifies the other parties. This is intended to permit the mediator to pursue a candid discussion with all parties of the issues and priorities in the dispute and the strengths and weaknesses of their positions. However, Subsection 55(g), discussed below, bars the mediator from disclosing one party's

[10] The NASD has stated that it intends to solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits and explore whether mediation might meet the needs of the parties. These efforts are intended to increase the number of matters submitted to mediation and reduce the number of matters submitted to arbitration.

[11] See NASD Manual, Code of Arbitration Procedure, Part III, Sec. 23, (CCH) ¶ 3723.

[12] The American Bar Association (''ABA'') is considering draft mediator standards of conduct. Draft Standard III states in pertinent part that ''[w]ithout the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.''

confidential information to another party without authorization.

New Subsection 55(f) sets forth the goal of mediation—to explore and come to a good faith settlement of an outstanding dispute without resort to adversarial adjudication. This Subsection also permits parties to negotiate directly outside the mediation process.

New Subsection 55(g) provides that mediation is intended to be private and confidential. This Subsection obligates the parties and the mediator not to disclose or otherwise communicate anything disclosed during the mediation in any other proceeding, unless authorized by all other parties to the mediation. The Subsection permits disclosure if compelled by law, which provides for situations when a party is subpoenaed or when there are regulatory requirements, such as the disclosures required in Form U–4 or under Article IV, Section 5 of the Rules of Fair Practice.[13] This Subsection also provides expressly that the fact that a mediation occurred is not confidential.

New Subsection 55(g) also makes clear that the confidentiality provisions will not operate to shield from disclosure documentary or other information that the Association or any other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities. Accordingly, the fact that documentary or other information had been disclosed during the course of a mediation would not render it confidential or shield it from disclosure to the NASD or an opposing party in civil litigation where it otherwise would be available to these parties.

In addition, the Subsection bars the mediator from disclosing one party's confidential information to another party without authorization, which memorializes a standard practice of mediators.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[14] because the rule change will protect investors and the public interest by providing a voluntary alternative to adversarial adjudication of disputes that may result in lower-cost, quicker resolution of disputes. The proposed rule change approved today provides a forum for a non-binding discussion by all interested parties, and a form of dispute resolution that can be more effective than direct negotiations and that increases the likelihood of early settlement of a dispute at cost savings.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–95–25 be, and hereby is, approved, effective August 1, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18285 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[13] NASD Manual, Rules of Fair Practice, Art. IV, Sec. 5 (CCH) ¶ 2205.

[14] 15 U.S.C. 78*o*–3.

[(Release No. 34–36000; File No. SR–CHX–95–16)]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading Floor Dress Code

July 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 6, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and amended such proposed rule change on July 12, 1995,[2] as described in Items I, II, and III below, which Items have 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

The Exchange proposes to add interpretation and policy .03 to Rule 3 of Article XII of the Exchange's rules relating to the Exchange's dress code.

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

Article XII, Rule 3, interpretation and policy .01, provides that violations of the Exchange's dress code are Class B violations of the exchange's decorum rules.[3] The CHX dress code, which has been in existence for many years, is not codified in the Exchange's rules. The purpose of the proposed rule change is to incorporate the existing CHX dress code into the Exchange's rules as a formal interpretation and policy.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is consistent with Section 6(b)(6) of the Act[5] in that it will assist the Exchange in appropriately disciplining its members and persons associated with its members for violations of the rules of the Exchange.

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

The Exchange believes the proposed rule change will impose no burden on competition.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrected a citation in the original filing to one of the Exchange's rules and referenced Section 6(b)(6) of the Act as a statutory basis for the proposed rule change. See letter from David T. Rusoff, Esq., Foley & Lardner, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC (July 11, 1995).

[3] Chicago Stock Ex. Guide (CCH) ¶1613 (Sept. 1994). A member whose violative conduct is classified as a Class B offense may be fined summarily an amount not to exceed $100.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C.78f(b)(6).