Form BD and such location is subject to an annual NASD fee of $75.00.

Rule 3010 does not address the circumstance in which a business location is used exclusively for appointments from time to time between registered representatives and customers. This issue may arise under networking arrangements between NASD members and banks. In this context, registered representatives of the member may periodically schedule appointments with bank customers at a bank location where the NASD member conducts no securities activities. Under the Interagency Statement on Retail Sales of Non-deposit Investment Products, banks are required to use signage at the place of the appointment to identify the NASD member that employ the registered person.[7] Thus, the presence of this signage at the place of appointment could be interpreted as the member or its agent designating the location as a branch office for which branch office registration requirements would apply. Thus, the NASD has created another exception to the definition of branch office to address this type of situation.

The proposed amendment adds language to paragraph (g) of Rule 3010 to exempt from the definition of branch office certain locations where a person conducts business for the member firm occasionally and exclusively by appointment for the convenience of customers, and where the member maintains no other tangible presence. To be consistent with other provisions of Rule 3010, the persons conducting business at such locations would be required to provide each customer with the address and telephone number of the branch office or office of supervisory jurisdiction of the firm from which the person who is conducting the meeting is supervised.

III. Discussion

The Commission believes the proposed rule change is consistent with the Act and rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15A(b)(6)[8] of the Act.[9] Pursuant to Section 15A(b)(6), the proposed rule change permits member firms and their representatives to be flexible when scheduling appointments at a location convenient to their customers without being assessed an additional branch office registration fee. However, the Commission reiterates that member firms, pursuant to NASD Rules, are required to monitor and supervise representatives and their activity, whether they conduct business in a branch or non-branch office. The status of a location as a branch or non-branch office is not relevant to the duty to supervise.[10]

IV. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–97–41) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24133 Filed 9–10–97; 8:45 am]

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[7] Board of Governors of the Federal Reserve System *et al.*, Interagency Statement on Retail Sales of Non-deposit Investment Products, p. 10 (February 15, 1994).

[8] Section 15A(b)(6) requires the Commission to determine that a registered national securities association's rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

[9] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[10] The NASD plans to issue a Notice to Members to clarify member firms' supervisory responsibilities concerning non-branch offices.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39024; File No. SR–NASD–97–52]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Extension of the Large and Complex Case Rule and Making Application of the Rule Voluntary

September 5, 1997.

I. Introduction

On July 22, 1997.[1] 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'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 10334 of the NADS's Code of Arbitration Procedure (''Code'') to extend the effectiveness of Rule 10334 to August 1, 2002, and to make application of Rule 10334 voluntary.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38879 (July 28, 1997), 62 FR 41454 (August 1, 1997). No comments were received on the proposal. This order approve the proposed rule change.

II. Description

Rule 10334 provides special procedures for large and complex cases.[4] Any claim where the amount in controversy is $1 million or more, or where all parties agree, is eligible for disposition under the procedures.

Currently, Rule 10334 requires that the parties in any eligible case participate in an administrative conference with a member of the staff of the Office of Dispute Resolution (''Office''). The purpose of the conference is to permit the parties and staff to develop a plan for administering the case, including planning for discovery and narrowing the issues to be decided at the hearing. Application of all other provisions of the Rule to a case is completely voluntary.

Rule 10334 was developed to meet the special needs of parties in large and complex cases, including the need for arbitrators with particular experience and the need in some cases for additional discovery, including the availability of depositions. NASD Regulation's experience in the two years that Rule 10334 has been effective is that few parties use the procedures. From May 2, 1995 until January 28, 1997, 880 cases were eligible for treatment under Rule 10334. Parties agreed to proceed under Rule 10334, however, in only 43 cases.

[1] The NASD filed Amendment No. 1 to the proposed rule change on July 25, 1997, the substance of which was incorporated into the notice. *See* letter from Elliott R. Curzon, Assistant General Counsel, NASDR, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated July 25, 1997 (''Amendment No. 1'').

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

[3] 17 CFR 240.19b–4.

[4] The rule, in pilot form, became effective for one year on May 2, 1995, was extended to August 1, 1996, extended again until August 1, 1997, and temporarily extended until approval of this rule proposals. *See* Securities Exchange Act Release Nos. 35314 (February 1, 1995), 60 FR 7241 (February 7, 1995) (original approval of pilot program); 37154 (April 30, 1996), 61 FR 20301 (May 6, 1996) (temporary extension until August 1, 1996); 37513 (August 1, 1996), 61 FR 41438 (August 8, 1996) (exentsion until August 1, 1997); and 38879 (July 28, 1997), 62 FR 41454 (August 1, 1997) (temporary extension).

NASD Regulation has found that parties are deterred from using these procedures by the extra compensation paid to arbitrators and the additional administrative fees required under Rule 10334. At the same time, NASD Regulation found that one of the most attractive aspects of Rule 10334 is the availability of a list selection procedure for the appointment of arbitrators, which is not yet generally available for other types of arbitration cases.

In addition, the attractiveness of the procedures may be affected by the required administrative conference with the staff. This conference may be beneficial in assisting the parties to develop a road map for a proceeding, even if the parties to not agree to use other procedures under Rule 10334. However, the requirement that the administrative conference be conducted in all cases over $1 million, regardless of whether the parties plan to proceed under Rule 10334, creates a cost burden to the parties and to the Office.

Accordingly, NASD Regulation is proposing to amend Rule 10334 to provide for an administrative conference with the staff only if all parties request such a conference in writing. The procedures will be available if the parties voluntarily agree to proceed with an administrative conference and to develop a written agreement to proceed under Rule 10334. An administrative conference will, however, continue to be a prerequisite to the use of the special procedures provided by Rule 10334. In addition, NASD Regulation is proposing to amend Rule 10334 to extend the Rule for five more years to August 1, 2002.

III. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] in that extending the effectiveness of the procedures for large and complex cases and making their use entirely voluntary will serve the public interest, by enhancing the satisfaction and perceived fairness of such proceedings by the parties to the proceedings.[6] The Commission notes that providing for a five-year extension of the pilot program will permit arbitration participants to continue to utilize the procedures. In addition, an extension of the pilot program will allow the NASD to gather additional data on the program and to continue to monitor the usefulness of the large and complex rule to arbitration parties, in order to see if the pilot program should be approved on a permanent basis.

The Commission also believes that amending Rule 10334 to provide for an administrative conference with the staff only if all parties request such a conference in writing[7] is reasonable under the Act because the elimination of the requirement for an administrative conference in all cases should result in reduced costs to the parties and to NASD Regulation. The Commission also notes that an administrative conference will continue to be a prerequisite to the use of the special procedures provided by Rule 10334.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–97–52) is approved, through August 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78*o*–3.

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] The procedures will be available if the parties voluntarily agree to proceed with an administrative conference and to develop a written agreement to proceed under Rule 10334.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39021; File No. SR–NASD–97–45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Modifications to the Definition of Qualified Independent Underwriter

September 4, 1997.

I. Introduction

On June 26, 1997, the National Association of Securities Dealers, Inc., (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 relating to modifications to the definition of ''qualified independent underwriter.'' The proposed rule change was published for comment in Securities Exchange Act Release No. 38833 (July 11, 1997), 62 FR 38333 (July 17, 1997). The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NASD is proposing to amend Rule 2720, Distribution of Securities of Members and Affiliates—Conflicts of Interest, that regulates the conduct of offerings by members of their own securities, those of the member's parent, or an affiliate, and other offerings in which a member has a conflict of interest.

When a member proposes to participate in the distribution of a public offering of its own or an affiliate's securities, or of securities of a company with which it otherwise has a conflict of interest, NASD Rule 2720 requires that the price at which an equity issue or the yield at which a debt issue is to be distributed to the public be established at a price no higher or a yield no lower than that recommended by a member acting as a ''qualified independent underwriter.'' The qualified independent underwriter must also participate in the preparation of the offering document and is expected to exercise the usual standards of due diligence in respect thereto. The participation of a qualified independent underwriter is intended to assure the public of the independence of the pricing and due diligence functions in a situation where a member is participating in an offering where the member has a conflict of interest.

The NASD is proposing to delete the requirement that a qualified independent underwriter has had net income from operations of the broker/dealer entity or from the pro forma combined operations of predecessor broker/dealer entities, exclusive of extraordinary items, as computed in accordance with generally accepted accounting principles, in at least three of the five years immediately preceding the filing of the registration statement.

III. Discussion

The Commission believes the NASD's proposed rule change is consistent with the Act, and specifically with Section 15A(b)(6) thereunder.[3] Section 15A(b)(6) requires that the rules of a national securities association be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78o–3.