users may also transmit trade data to recordkeeping vendors where the custody and accounting functions are performed by two different parties.

According to DTC, the HUB Mailbox was developed in cooperation with the Industry Standardization for Institutional Trade Communication (''ISITC'')[6] to improve the delivery of ISITC messages. Therefore, all information will be entered in an ISITC approved format initially, but other formats may be used later if agreed upon by two or more HUB users.

To use the HUB Mailbox, investment managers and custodian banks will place formatted records into bundles for each addressee with appropriately coded headers and trailers and DTC will route the bundles to addresses' mailboxes for retrieval. Addressees will acknowledge receipt of bundles through their mailboxes. All mail messages, both delivered and undelivered, will be transferred at the end of each business day between 2 a.m. and 3 a.m. (ET) to a separate file which can be accessed directly on the next day. DTC will store mail messages for up to five days. According to DTC, it will not do any processing other than to direct mail to appropriate mailboxes.

Excerpts from the separate forms of agreement to be executed by HUB Mailbox users are attached as Exhibits C, D, and E to the filing. Exhibit C lists the fees to be charged for the service to investment manager users, and Exhibit D lists the fees to be charged for the service to custodians. Liability provisions, identical in both forms of agreement, are found in Exhibit E.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because it will increase the speed of data transmissions between investment managers and custodians, thereby promoting efficiencies in the clearance and settlement of securities transactions.

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

DTC believes that no burden will be placed on competition as a result of the proposed rule change.

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

Written comments on the proposed rule change have not been solicited from DTC participants. Nevertheless, DTC has tested the HUB Mailbox in a pilot program with a few investment managers and custodian banks. One of the participants in the pilot program characterized the HUB Mailbox as ''the most efficient, secure and cost effective manner to obtain reconciliation data daily.''

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

Within thirty-five 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 ninety 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 DTC 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, including whether the proposed rule change is consistent with the Act. Persons 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–TDC–98–2 and should be submitted by June 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12554 Filed 5–11–98; 8:45 am]

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President and Senior Counsel, DTC, and Jeffrey Mooney, Special Counsel, Division of Market Regulation (''Division''), Commission, and Greg Dumark, Attorney, Division, Commission (March 2, 1998).

[6] ISITC is a committee of investment managers, custodians, and vendors which was established in 1991, has developed standard message formats and operating protocols for transmitting information concerning security-related transactions between and among investment managers and custodians. ISITC's goals are to overcome difficulties encountered by investment managers in communicating with multiple custodians and to attain straight-through-processing. Many ISITC members are DTC participants.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39957; File No. SR–NASD–98–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Cancellations and Suspensions for Failure To Comply with Arbitration Award

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 1, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. (''NASD Regulation''). 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 Association proposes to amend that portion of Rule 9514 of the Rules of the Association relating to review of non-compliance with arbitration awards and settlements. The Association proposes to change the composition of the hearing panels used in such proceedings. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

9514. Hearing and Decision.

* * * * *

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, association person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be

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

designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party[, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members]. *For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members:* [One] *one* member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on [the] *a* Hearing Panel.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

The purpose of the proposed rule change is to change the composition of the Hearing Panel used for proceedings under the Rule 9510 Series in which NASD Regulation seeks to suspend or cancel the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Currently, Rule 9514(b) requires that the Hearing Panel for such proceedings be composed of two or more members, one of whom must be a Director of NASD Regulation, and the remaining member or members must be a current or former Director of NASD Regulation or Governor of the NASD. NASD Regulation has determined that board-level panelists are not necessary for such hearings because the issues to be resolved are narrow and largely administrative. Generally, the only issues to be addressed are whether: (1) the member or person paid the award in full or fully complied with the settlement agreement; (2) the claimant agreed to installment payments or has otherwise settled the matter; (3) the member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; (4) the member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending, or the award or payment owed under the settlement agreement has been discharged by the bankruptcy court; and (5) the member or person is unable to pay the award. The Commission has stated that a bona fide inability to pay an arbitration award is an important consideration determining whether any sanction for failure to pay an arbitration award is excessive or oppressive.[2] NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing on these issues and render a decision. Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will result in a fair and efficient procedure for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation so that where appropriate, such members or persons are not permitted to continue to do business with investors.

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

NASD Regulation does not believe the proposed rule change would 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 thirty-five 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 ninety 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, including whether the proposal is consistent with the Act. Persons 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 such filing will also be available for inspection and copying at the principal office of NASD Regulation. Al submissions should refer to the file number in the caption above and should be submitted by May 27, 1998.

[2] *See In the Matter of the Application of Bruce M. Zipper,* Securities Exchange Act Release 33376, Admin. Proc. File No. 3–7908. (Dec. 23, 1993).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–12456 Filed 5–11–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39958; File No. SR–NASD–97–92]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed By-Law Amendment Requiring Members to Update Firm Contact Information Electronically, to Maintain Electronic Mail Account and for Other Purposes

May 5, 1998.

On December 19, 1997, 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''),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on April 22, 1998.[3] In this filing, as amended, the Association proposed amendments to the NASD By-laws, to require members to communicate with the Association electronically. Under this proposal, members will be required to set up and maintain an electronic mail account and must update their firm contact information through the Internet. In addition, the Association has included a technical amendment to the composition of the NASD National Nominating Committees, correcting a misprint from an earlier filing.[4] Notice of the proposal was published in the Federal Register on January 16, 1998 (''Notice'').[5] The Commission received three comment letters on the filing.[6]

I. Introduction and Background

On August 5, 1997, the Membership Committee of the NASD Regulation, Inc. (''NASD Regulation'') Board of Directors recommended requiring each member's executive representative to maintain an Internet electronic mail account for communication with the NASD and to update firm contact information via NASD Regulation's Internet web site. Following approval by the NASD Regulation Board of Directors and the NASD Board of Governors, the Notice was filed with the Commission and published in the Federal Register.[7] When polled on this proposal, as required by the NASD By-laws, the NASD membership voted more than two to one in favor of requiring maintenance of electronic mail accounts.[8]

II. Description of the Proposal

A. Electronic Mail Accounts and Updating of Member Information

The Proposal promotes Internet use by the Association and its members as a communication tool. As revised, the NASD By-laws will require each member to acquire and maintain an Internet electronic mail address on behalf of its executive representative before January 1, 1999.

In addition to maintaining electronic mail accounts, members will also be required to update firm contact information electronically. In its filing, the NASD maintained that the present method of collecting firm contact information (which is used for member balloting, compliance purposes and targeting key individuals for informational mailings, *etc.*) through physical filing of an *NASD Member Firm Questionnaire* (''Member Questionnaire'') needs improvement. There are significant problems with current procedures. First, information is often stale, because members rarely update the filings. Second, the Member Questionnaire information, which is currently stored and made available through the Central Registration Depository or ''CRD,'' is not readily available for use in other computer programs and systems. Finally, the planned system enhancements to the CRD do not contemplate inclusion of Member Questionnaire data. Using the new electronic mailboxes, the NASD intends to transmit e-mail reminders to members to update their Membership Questionnaires on a periodic basic. Member firms can then easily access their respective Member Questionnaire via the NASD Regulation Web Site for updating.[9] The Association has indicated that information provided in this manner is more readily interfaced to the internal NASD Regulation systems requiring the data.

The three comment letters received by the Commission on this rule filing all react negatively to required use of the Internet and electronic mail accounts. The main objections relate to the costs involved in setting up and maintaining such services. One commentator suggested that the decision to maintain an electronic mail account should be discretionary, rather than mandatory.[10] Concerns about lack of member of NASD control over the Internet and internet functionality, reliability, access, integrity and security were also noted[11] The Association's response argues that the minimal costs involved in connecting to the Internet (as little as ten dollars a month for an account and less than one thousand dollars for a computer and modem) are ''reasonable in light of the tremendous benefits that electronic mail and Internet communication will bring to the membership.''[12] The NASD also stressed its belief that all, rather than some, members should have an electronic mail account, to ''strive for uniformity of notice and enable speedy and relatively inexpensive communication with all members.''[13]

B. Technical Amendment to Nominating Committee Composition

The NASD also proposes a technical amendment to Article VII, Section 9(b) of the NASD By-Laws. In November, 1997, the Commission approved a comprehensive revision to the Association By-Laws, implementing a

[3] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4

[3] Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated April 22, 1998. The amendment provides the members' vote and responses to the comment letters. It is technical in nature and therefore not subject to a notice and comment requirement.

[4] *See* Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997); *see also infra* text surrounding note 7.

[5] *See* Securities Exchange Act Release No. 39539 (January 12, 1998), 63 FR 2709 (January 16, 1998) (File No. SR–NASD–97–92). Amendment No. 1 to the proposed rule filing was filed on April 22, 1998. *See supra* note 3.

[6] *See* Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 23, 1998; Letter from John B. Simmon, Morris Group Inc. to Secretary, Commission, dated January 22, 1998; and Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

[7] Release No. 34–39539, *supra* note 5.

[8] *See* Amendment No. 1, *supra* note 3. The membership vote was 1,884 in favor, 876 against. *Id.*

[9] A firm would be able to access only its own Member Questionnaire; the information would be password-protected to prevent any public access.

[10] *See* Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

[11] *Id.*

[12] Amendment No. 1, *supra* note 3 at 2.

[13] *Id.*