the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[6] of the Act.

The Commission set forth its reasons for approving Rule G–11(g)(iii) in its current form, requiring increased disclosure of designation information, when it was amended in November 1998. It believes that the instant proposal, resolving questions that have arisen since that time, provides answers that are fully consonant with those reasons.

The new language that, in response to the first question outlined above, expressly stipulates that designation information must be disclosed to all syndicate members merely clarifies the intent of last year's amendment as understood by the Commission. Concerning the second question, the Commission agrees with the Board that designation information is most useful to syndicate members when stated in terms of dollar amounts, and that there is no need to further require that the information also be stated in terms of bond amounts. Finally, the Commission agrees with the Board that requiring managers to disclose designations paid to non-syndicate-members as well as syndicate members is consistent with the purpose of last year's amendment generally to increase the disclosure of designation information.

III. 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 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2)[7] of the Act, that the proposed rule change (SR–MSRB–99–2) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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designation information, including information concerning non-syndicate members, will be available to all members of the syndicate. 15 U.S.C. 78c(f).

[6] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are designed to prevent fraudulent and manipulative acts and practices, 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41339; File No. SR–NASD–99–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Use of Non-SRO Arbitration Forums

April 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. The proposed rule change has been filed by the Association as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act. The Association proposes to make the rule change operative on May 17, 1999. 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

NASD Regulation is proposing to amend the Code of Arbitration Procedure to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations. Below is the text of the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets:

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

10000. CODE OF ARBITRATION PROCEDURE

10100. ADMINISTRATIVE PROVISIONS

IM–10100. Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a)–(c) No change.

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of [securities] disputes before the American Arbitration Association *or other dispute resolution forum selected by the parties* where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) No change.

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 proposed rule change is intended to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations, and to ensure that NASD Regulation may take disciplinary action for the failure of a member or associated person to comply with an award obtained pursuant to the rules and procedures of such dispute resolution programs.

Background and Description of Proposed Amendment. In the NASD Code of Arbitration Procedure, IM–10100 provides that it shall be a violation of Rule 2110[4] for a member or a person associated with a member to fail to honor an award or comply with a written and executed settlement agreement obtained in connection with an arbitration at various self-regulatory organizations (SRO) or the American Arbitration Association (AAA), an organization that is not affiliated with the securities industry.

Prior to 1991, the interpretive material now numbered IM–10100 provided only that it was a violation of NASD rules for members and associated persons to fail to honor awards rendered pursuant to the NASD's Code of Arbitration Procedure. The interpretive material was amended in 1991 to include awards issued in arbitration forums sponsored by the other SROs and the AAA. The amendment was intended to encompass awards rendered pursuant to the Uniform Code of Arbitration utilized by all members of the Securities Industry Conference on Arbitration (SICA),[5] or pursuant to the rules applicable to the arbitration of securities disputes before the AAA, which some broker/dealers had begun to offer to their customers as an alternative forum.

In recent years, many alternative dispute resolutions forums have been created and achieved some popularity. Under the sponsorship of SICA, several member broker/dealers are now considering a voluntary pilot program in which they will arbitrate to completion, during a two-year period, a specified number for cases at one of several dispute resolution forums that are not sponsored by the SROs. Under this pilot program, the firms will designate to SICA one or more alternative forums that meet certain due process standards, and will agree to arbitrate all eligible cases at a designated non-SRO forum at their customers' election. Firms may not selectively choose which of their cases will be tried before a non-SRO forum. Cases eligible for the SICA program are customer-initiated cases in which the customer is represented by counsel.[6]

SICA developed the pilot program partly in response to a petition by an organization of attorneys who represent investors, the Public Investors Arbitration Bar Association (PIABA). PIABA had petitioned the SEC to require NASD Regulation to establish the AAA as an alternative forum for all customer arbitrations. Such a requirement would supersede any contrary forum selection clauses in arbitration agreements between members and their customers. The SEC referred the petition to SICA and NASD Regulation for consideration.

In the pilot program the participating non-SRO forums will send copies of all awards to the SRO where the claim either was filed or would have been filed absent the pilot program. Parties are required by the program's guidelines to pay all awards within 30 days of receipt unless a motion to vacate is filed.

While NASD Regulation believes that use of the SICA pilot program does not require a rule change, since it is entirely voluntary and a matter of contract between firms and their customers, NASD Regulation is concerned that there might be some difficulty in bringing disciplinary action for any noncompliance with an award issued by a forum that is not listed in IM–10100. Therefore, NASD Regulation proposes to amend IM–10100 to add language clarfying that failure to comply with awards issued by any dispute resolution forum could be grounds for disciplinary action.

In connection with the above change, NASD Regulation also recommends deletion of the word ''securities'' in paragraph (d) of IM–10100, which currently refers to awards obtained ''pursuant to the rules applicable to the arbitration of securities disputes'' at a non-SRO forum. This change is recommended for two reasons. First, most non-SRO dispute resolution forums do not have separate rules for securities arbitration. Second, the change will also accommodate another emerging trend in which firms are contracting with outside dispute resolution forums to resolve disputes between the firms and their employees. Such disputes would be arbitrated according to employment or commercial rules of the dispute resolution forum, rather than the securities rules. NASD Regulation believes that the use of a non-SRO forum should not allow members or associated persons to circumvent the NASD's rules requiring them to comply with arbitration awards. Therefore, more inclusive language is proposed.[7]

IM–10100, paragraph (d), currently provides that it shall be violation of Rule 2110 for a member or associated person to fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the listed SROs or ''pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association where timely motion has not been made to vacate or modify such award pursuant to applicable law.'' NASD Regulation proposes to delete the word ''securities'' from paragraph (d), and to add the phrase ''or other dispute resolution forum selected by the parties'' after ''American Arbitration Association.'' This will have the effect of bringing under the coverage of the interpretive material an award or settlement agreement obtained pursuant to the arbitration rules of any dispute resolution forum to which the parties have agreed to submit their dispute. It also will no longer restrict the application of IM–10100 to disputes decided under the securities rules of the non-SRO dispute resolution forum, but will apply as well to the employment arbitration rules or general commercial rules of the dispute resolution forum, if applicable to the dispute.

2. *Statutory Basis*

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[8] 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. NASD Regulation believes that the proposed rule change will protect investors and the public interest by ensuring that

[4] Rule 2110 provides as follows: ''A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.''

[5] SICA is a group composed of representatives of the self-regulatory organizations that provide arbitration forums, of public investors, and of the securities industry. Staff of the SEC participate as non-voting invitees.

[6] The pilot program will not be available for disputes involving employment-related or member to member cases, class actions, partnership investments, claims for transactions that occurred more than four years before the pilot program began, or claims in which a respondent firm or associated person has not agreed to participate in the pilot program.

[7] The inclusiveness of this new language does not expand the scope of matters covered by the Code of Arbitration Procedure, which, as specified in Rule 10101, was prescribed and adopted ''for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company.'' Telephone conversation, April 21, 1999, between Jean I. Feeney, Assistant General Counsel, NASD Regulation, and Ira L. Brandriss, Staff Attorney, Division of Market Regulation, Commission.

[8] 15 U.S.C. 78–3(b)(6).

members and associated persons have a duty to comply with awards obtained in non-SRO forums.

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

NASD Regulation 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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 17, 1999, more than 30 days from April 14, 1999, the date on which it was filed, and NASD Regulation provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the pubic interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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. 20549–0609. 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 the file number in the caption above and should be submitted by May 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41337; File No. SR–NASD–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adoption of Interpretive Materials Regarding Future Priced Securities

April 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 1999,[3] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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. 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

Nasdaq proposes to adopt interpretive material relating to certain convertible securities. Below is the text of the proposed rule change. All text is being added.

* * * * *

IM–4300, Interpretive Material Regarding Future Priced Securities

Summary

Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. The security is generally structured in the form of a convertible security and is often issued via a private placement. Issuers will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the issuer's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay is setting the conversion price is appealing to issuers who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the issuer's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, an issuer may issue $10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into $10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is $5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is $1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the issuer carefully considers the terms of the securities in connection with several NASD Rules, the issuance of Future Priced Securities could result in a failure to comply with Nasdaq listing standards and the concomitant delisting of the issuer's securities from the Nasdaq Stock Market. Nasdaq'a experience has been that issuers do not

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

[2] 17 CFR 240.19b–4.

[3] The Association originally filed the proposed rule change on March 8, 1999. After consultation with Commission staff, the Association filed Amendment No. 1 to clarify certain provisions of the proposed rule language. Letter to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, NASD, dated April 14, 1999 (''Amendment No. 1'').