

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

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

DTC proposed to change its service fee schedule by adding the following Participant Terminal System (PTS) fees under the heading "GWIZ Service."<sup>3</sup> the proposed fees are designed to recover DTC's estimated service costs.

Service	Present fee	Proposed fee
For Original Issuance services, which combines descriptive and most recent event information.	None .....	\$.25 per inquiry.
For DTC Processing services, which includes four pages of CONI information.	None .....	\$.020 per inquiry.
For Agent, Distribution, Redemption and Corporate Action Screens.	None .....	\$.09 per inquiry.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in DTC's possession or control.

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

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No comments on the proposed rule change were solicited or received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder because the proposed rule change establishes or changes a due, fee, or other charge. At any time within sixty 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 public 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 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, NW., Washington, DC 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, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-00-11 and should be submitted by January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43695; File No. SR-NASD-00-34]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Authority of the Director of Arbitration to Remove Arbitrators for Cause**

December 8, 2000.

**I. Introduction**

On June 13, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> On July 28, 2000, NASD Dispute Resolution submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> GWIZ is a new PTS function that offers DTC's participants improved search and navigation capabilities and expanded information about eligible securities. The GWIZ service combines corporate data from five currently separate PTS functions into one application and provides access to more up-to-the-minute information (e.g., corporate actions, dividends, and redemptions)

with fewer keystrokes to the GWIZ user. In addition, GWIZ provides links to other PTS functions for more detailed or participant-specific information.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Jean I. Feeney, Special Advisor to the President, NASD Dispute Resolution, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 27, 2000. Amendment No. 1 clarified certain portions of the description of the proposed rule change and made technical amendments to the text of the proposed rule language.

amends NASD Rules 10308 and 10312 to provide authority to the Director of Arbitration ("Director") to remove arbitrators for cause after hearings have begun. Notice of the proposed rule change was published for comment in the **Federal Register** on September 22, 2000.<sup>4</sup> The Commission received two comment letters regarding the proposal.<sup>5</sup> This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

NASD Dispute Resolution proposes to amend NASD Rules 10308 and 10312, relating to arbitration, by permitting the disqualification or removal of arbitrators for cause after the first pre-hearing or hearing session begins, and by deleting current provisions to the contrary. Under the proposed amendments, disqualification or removal would only be permitted based on information that was required to be disclosed by the arbitrator pursuant to Rule 10312, and that was not known to the parties when the arbitrator was selected. The proposal further provides that only the Director or the President of NASD Dispute Resolution could so remove arbitrators. This authority could not be delegated.

In addition to the changes described above, NASD Dispute Resolution proposes to amend Rule 10312, its arbitrator disclosure rule, in several places. First, the word "personally" would be deleted from Rule 10312(a)(2), and the phrase "or circumstances" would be added to paragraphs (b) and (e). These changes are intended to broaden the categories of information to be disclosed by arbitrators, so that all such information, and not only information involving "relationships" (as stated in the current rule) is disclosed. Thus, the disclosure of any existing or past financial, business, professional, family, social, or other relationships or circumstances that are likely to affect impartiality, or that might reasonably create an appearance of partiality or bias, should be disclosed. Second, NASD Dispute Resolution proposes to amend Rule 10312 to clarify that the Director may entertain for-cause challenges based on sources of information other than the arbitrator. Finally, Rule 10312(f) would be deleted

as unnecessary in light of the preceding changes.

## III. Summary of Comments

The Commission received two letters regarding the proposed rule change. The National Futures Association ("NFA") supported the proposal, noting that it employed similar procedures in administering its arbitration program. NFA asserted that the proposal would be efficient, would ensure the integrity of arbitration proceedings, and would resolve conflicts without requiring the parties to seek judicial intervention.<sup>6</sup> A second letter from a practitioner in securities arbitration opposed the proposed rule change. The commenter stated that the authority to remove for cause presents conflicts of interest, and that determinations of bias should be resolved by the courts.<sup>7</sup>

## IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>8</sup> The Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,<sup>9</sup> which requires that the rules of a registered national securities association 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 proposed rule change will permit the Director or the President of NASD Dispute Resolution to remove an arbitrator at any juncture, based on information not known to the parties at the time of the arbitrator's appointment and that should have been disclosed by the arbitrator pursuant to Rule 10312. The Commission notes that NASD Dispute Resolution's current rules do not allow for removal of an arbitrator with a subsequently discovered conflict of interest. In this situation, parties may be forced to resort to judicial intervention to address these conflicts. This creates litigation expenses, diminishes confidence in the arbitration system, and undermines the purpose of arbitration.

The Commission believes that these amendments to NASD Rules 10308 and 10312 should provide for the protection of, and will benefit, users of the arbitration program. The Commission

notes that the Director already has the authority to remove arbitrators for cause before the first hearing or pre-hearing conference. This proposal extends that authority beyond the first hearing or pre-hearing conference. The new provisions should result in lower litigation expenses for parties, because they will be able to request the Director to remove an arbitrator, rather than be required to seek judicial intervention. The Commission further believes that the proposal will help ensure greater confidence in the fairness and neutrality of the administration of arbitration proceedings. Further, the Commission believes the proposed revisions will help protect investors' interests by allowing the Director the flexibility to remove arbitrators for cause at any time during an arbitration proceeding, based on information that should have been disclosed by the arbitrator, regardless of the source of that information. This authority is consistent with that provided for in the rules of other arbitration programs.<sup>10</sup> Finally, the proposed revisions should facilitate speedy resolution of potential conflicts of interest.

The Commission also believes that the proposed rule changes will benefit investors by providing for broader disclosure by arbitrators. The rule change will clarify that arbitrators are required to disclose not only personal relationships, but also any circumstances that are likely to affect their actual or perceived impartiality. This additional information should assist parties in arbitration in their efforts to select neutral and fair arbitrators. It should also increase confidence in the neutrality and objectivity of the arbitration process.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASD-00-34) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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<sup>4</sup> See Securities Exchange Act Release No. 34-43291 (September 14, 2000), 65 FR 59036 (September 22, 2000) ("Notice")

<sup>5</sup> See letters to the Secretary, Securities and Exchange Commission, from Jonathan Kord Lagemann, dated October 6, 2000 the Authority of the Director of Arbitration to Remove Arbitrators for Cause ("Lagemann letter"), and letter from Cynthia A. Cain, Director of Arbitration, National Futures Association ("NFA letter"), dated October 12, 2000.

<sup>6</sup> See NFA Letter.

<sup>7</sup> See Lagemann Letter.

<sup>8</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o(b)(6).

<sup>10</sup> See Notice, 65 FR 57413, 57415, notes 8, 10 and 11 (citing the rules of other arbitration programs).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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