On March 21, 2005 and March 30, 2005, the Exchange filed Amendment Nos. 1 and 2, respectively, to the proposal. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 7, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Exchange is rolling out a new, automated functionality, CHXpress, which, according to the Exchange, is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.[4] With a few exceptions, CHXpress orders will be executed immediately and automatically against same or better-priced orders in the specialist's book, or against the specialist's quote (when CHXpress is available).[5] If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for display or later execution.[6] The handling of CHXpress orders within the Exchange's systems is entirely automatic. CHX specialists do not provide CHXpress orders with the execution guarantees that might otherwise be available to agency limit orders,[7] and CHX specialists also would not be required to seek liquidity for CHXpress orders in other markets. This proposal clarifies that a CHX specialist would not be permitted to charge a commission in connection with the execution of a CHXpress order.

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with sections 6(b)(5) and 6(e)(1) of the Act,[10] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members. The Commission also believes that the proposed rule change is consistent with section 11(A)(a)(1)(C) of the Act,[11] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, economically efficient execution of securities transactions, and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

The Commission believes that the Exchange's proposal is consistent with section 6(e) of the Act.[12] Section 6(e) of the Act[13] was adopted by Congress in 1975 to statutorily prohibit the fixed minimum commission rate system. As noted in a report of the House of Representatives, one of the purposes of the legislation was to ''reverse the industry practice of charging fixed rates of commissions for transactions on the securities exchanges.''[14] The fixed minimum commission rate system allowed exchanges to set minimum commission rates that their members had to charge their customers, but allowed members to charge more. CHX's proposal, by contrast, does not establish a minimum commission rate, but instead prohibits commissions in circumstances in which the CHX specialist does not handle the order. Accordingly, the Commission does not believe that the Exchange's proposal to limit the fees charged by CHX specialists constitutes fixing commissions, allowances, discounts, or other fees for purposes of Section 6(e)(1) of the Act.[15] In addition, the Commission believes that the Exchange's proposal is reasonable because it prohibits a CHX specialist from charging a commission for an order executed without assistance or handling by the CHX specialist. In this regard, the Commission notes that it has not viewed a self-regulatory organization's limits on fees that its members may charge, even when a member acts as agent, as inconsistent with section 6(e) of the Act.[16] In addition, the Exchange's limits on fees that CHX specialists may charge applies only to members who choose to be specialists on the Exchange. Therefore, CHX is not fixing fees generally; it is merely imposing a condition, which is consistent with the Act, on a member's appointment as a specialist.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5) and 6(e)(1) of the Act.[17] It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CHX–2005–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**J. Lynn Taylor,**

*Assistant Secretary.*

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[3] *See* Securities Exchange Act Release No. 51465 (April 1, 2005), 70 FR 17743.

[4] *See* Securities Exchange Act Release No. 50481 (September 30, 2004); 69 FR 60197 (October 7, 2004) (SR–CHX–2004–12).

[5] *See* CHX Article XX, Rule 37(b)(11)(C).

[6] A CHXpress order will be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. *See* CHX Article XX, Rule 37(b)(11)(D).

[7] *See* CHX Article XX, Rule 37(b)(11)(E)–(F).

[8] 15 U.S.C. 78f.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission notes that it previously approved similar proposed rule changes filed by the New York Stock Exchange, Inc. (''NYSE'') to prohibit a specialist on the NYSE from charging ''floor brokerage'' (*i.e.*, a commission imposed on exchange floor brokers) for the execution of an order received by the specialist via the NYSE's automated order routing system, known as SuperDot. *See* Securities Exchange Act Release Nos. 42727 (April 27, 2000), 65 FR 26258 (May 5, 2000); 42694 (April 17, 2000), 65 FR 24245 (April 25, 2000); and 42184 (November 30, 1999), 64 FR 68710 (December 8, 1999). In addition, the Commission recently approved a proposed rule change submitted by the Chicago Board Options Exchange (''CBOE'') to prohibit Designated Primary Market Makers (''DPMs'') from charging a brokerage commission for an order, or the portion of an order: (i) For which the DPM was not the executing broker, which includes any portion of the order that is automatically executed through a CBOE system; (ii) that is automatically cancelled; or (iii) that is not executed, and not cancelled. *See* Securities Exchange Act Release No. 51235 (February 22, 2005), 70 FR 9687 (February 28, 2005).

[10] 15 U.S.C. 78f(b)(5) and 78f(e)(1).

[11] 15 U.S.C. 78k–1(a)(1)(C).

[12] 15 U.S.C. 78f(e).

[13] *Id.*

[14] H.R. Rep. No. 94–123, 94th Cong., 1st Sess. 42 (1975).

[15] 15 U.S.C. 78f(e)(1).

[16] 15 U.S.C. 78f(e)(1).

[17] 15 U.S.C. 78f(b)(5) and 78f(e)(1).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51688; File No. SR–NASD–2005–053]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation Date of Revisions to the Series 4 Examination Program

May 12, 2005.

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 18, 2005, the National Association of Securities Dealers, Inc. (''NASD'') 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. NASD has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD pursuant to section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 proposes to delay until no later than November 30, 2005 the implementation date of the recent revisions to the Limited Principal—Registered Options (Series 4) examination program, including the study outline and selection specifications (the ''Series 4 Examination''). NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

## 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 included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD 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

On February 9, 2005, NASD filed with the SEC for immediate effectiveness revisions to the Series 4 Examination.[5] The Series 4 Examination is an industry-wide examination that qualifies an individual to function as a Registered Options Principal. The Series 4 Examination is shared by NASD and the following SROs: The American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Incorporated, the New York Stock Exchange, Inc., the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. Amex and PCX filed with the SEC similar revisions to the Series 4 Examination.[6] NASD originally had proposed to implement the Series 4 Examination revisions by no later than April 29, 2005. However, due to administrative issues, NASD is proposing to delay until no later than November 30, 2005, the implementation date of the revisions. NASD will announce the revisions to the Series 4 Examination and the implementation date in a Notice to Members to be published no later than October 31, 2005.

NASD understands that Amex and PCX also will file with the SEC similar proposed rule changes to delay until no later than November 30, 2005, the implementation date of the revisions to the Series 4 Examination.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6)[7] and 15A(g)(3) of the Act,[8] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

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

NASD 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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder,[10] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. NASD proposes to implement the Series 4 Examination revisions by no later than November 30, 2005. NASD will announce the revisions to the Series 4 Examination and the implementation date in a Notice to Members to be published no later than October 31, 2005.

At any time within 60 days of the filing of the 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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–053 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* 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

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

[2] 17 CFR 240.19b–4.

[3] 5 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 51216 (February 16, 2005), 70 FR 8866 (February 23, 2005) (SR–NASD–2005–025).

[6] *See* Securities Exchange Act Release No. 51688 (May 12, 2005) (SR–Amex–2005–039); SR–PCX–2005–51.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78o–3(g)(3).

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

[10] 17 CFR 240.19b–4(f)(1).

provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–053 and should be submitted on or before June 9, 2005.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51693; File No. SR–NASD–2005–052]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Honorarium for Arbitrators Deciding Discovery-Related Motions

May 12, 2005.

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 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 (''SEC'' or ''Commission'') on April 14, 2005, on April 29, 2005 (Amendment No. 1) and on May 6, 2005, (Amendment No. 2), the proposed rule change as described in items I, II, and III below, which items have been prepared by 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

NASD Dispute Resolution is proposing to amend Interpretive Material (IM) 10104 of the NASD Code of Arbitration Procedure (''Code'') to provide payment to arbitrators for deciding discovery-related motions without a hearing.[3] Below is the text of the proposed rule change.[4] Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**IM–10104. Arbitrators' Honorarium**

*(a)* All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.

*(b)* The honorarium shall be $200 for each hearing session and $75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be $125.

*(c)* The honorarium for travel to a canceled hearing session shall be $50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of $100.

*(d)* The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

*(e) Payment for Deciding Discovery-Related Motions Without a Hearing Session*

*(1) NASD will pay each arbitrator an honorarium of $200 to decide a discovery-related motion without a hearing session. This paragraph does not apply to cases administered under Rules 10203 and 10302.*

*(2) For purposes of paragraph (e)(1), a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion.*

*(3) The panel will allocate the cost of the honoraria under paragraph (e)(1) to the parties pursuant to Rules 10205(c) and 10332(c).*

* * * * *

### 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 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 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

In 2002, NASD Dispute Resolution conducted arbitrator focus groups across the country. One of the consistently raised concerns was the amount of time and effort invested by chairpersons in reviewing and deciding various discovery motions, especially in situations in which the motions are decided without a hearing (*i.e.*, on the papers). Also, Dispute Resolution staff has found that the current lack of compensation for deciding such motions has made it more difficult to recruit current arbitrators to become chairpersons. Currently, arbitrators are not compensated for deciding discovery motions on the papers. Arbitrators are compensated, however, when they conduct pre-hearing conferences to hear argument from parties regarding discovery motions.

NASD is, therefore, proposing to adopt a rule to compensate arbitrators in the amount of $200 (the same amount that is paid for an arbitrator to participate in a pre-hearing conference regarding discovery) to decide discovery motions on the papers. The new rule language states that NASD will pay arbitrators an honorarium of $200 to decide a discovery-related motion without a hearing session. For purposes of this rule, a discovery-related motion and any replies or other correspondence relating to the motion will be considered to be a single motion. If more than one arbitrator considers a discovery-related motion, each arbitrator will receive $200. The panel will allocate the cost of the honoraria as part of the eventual arbitration award. The rule will not apply to simplified cases administered under Rules 10203 and 10302.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(5)[5] and 15A(b)(6)[6] of the Act, which require, among other things, that the NASD's rules provide

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[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] On March 15, 2005, NASD filed a proposed rule change to provide written explanations in arbitration awards upon the request of customers, or of associated persons in industry controversies. This proposal amends IM–10104. *See* SR–NASD–2005–032.

[4] This IM will be renumbered as appropriate following Commission approval of the pending revisions to be NASD Code of Arbitration Procedure for Customer Disputes filed on October 15, 2003, and amended on January 3, 2005, January 19, 2005, and april 8, 2005 (SR–NASD–2003–158); and the NASD Code of Arbitration Procedure for Industry Disputes filed on January 16, 2004, and amended on February 26, 2004, January 3, 2005, and April 8, 2005 (SR–NASD–2004–011).

[5] 15 U.S.C. 78o–3(b)(5).

[6] 15 U.S.C. 78o–3(b)(6).