the matter. After September 10, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–9343)

Northeast Utilities (''NU''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, NU's wholly-owned nonutility subsidiary, NU Enterprises, Inc. (''NUEI''), and Northeast Utilities Service Company, both located at 107 Selden Street, Berlin, Connecticut 06037, (collectively, the ''Applicants'') have filed a post effective amendment to their application-declaration under section 12(b) and rules 45 and 54 under the Act.

By order dated November 12, 1998 (HCAR No. 26939) (''Prior Order''), the Commission Authorized NU and NUEI to, among other things, issue guarantees or provide similar forms of credit support or enhancements (collectively, ''Guarantees''), to, or for the benefit of NUEI, NUEI's nonutility subsidiaries, or NU's other to-be-formed direct or indirect energy-related companies, as defined in rule 58 of the Act. The Commission, through subsequent orders in this file, authorized an increase in this Guarantee authority to $500 million and the extension of the date through which Guarantees may be provided through September 30, 2003, under the terms and conditions of the Prior Order. Applicants request in this filing to maintain the Guarantee authority at $500 million and to extend the date through which the Guarantees may be provided through June 30, 2004, under the terms and conditions of the Prior Order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21400 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48347; File No. SR–NASD–2003–95]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Arbitrator Classification and Disclosure in NASD Arbitration

August 14, 2003.

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 June 12, 2003, 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'') 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

The NASD proposes to amend Rules 10308 and 10312 of the NASD Code of Arbitration Procedure (''Code'') to provide additional assurance that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10100. Code of Arbitration Procedure

* * * * *

Rule 10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

(a) Definitions.

(1)–(3) Unchanged.

* * * * *

(4) ''non-public arbitrator''

The term ''non-public arbitrator'' means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past *5* [three] years, was:

(i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, *or spent a substantial part of a career,* engaging in any of the business activities listed in subparagraph (4)(A);

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last 2 years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) ''public arbitrator''

(A) The term ''public arbitrator'' means a person who is otherwise qualified to serve as an arbitrator and [is not]:

(i) *Is not* engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); [or]

(ii) *Was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more;*

(iii) Is not an investment adviser;

(iv) Is an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); and

(v) Is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) For the purpose of this Rule, the term ''immediate family member'' means:

(i) *The parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);*

(ii) *A member of the household of* [family member who shares a home with] a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(iii) A person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(*iv*[iii]) A person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

* * * * *

Remainder of (a) through (c) unchanged.

* * * * *

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

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

[2] 17 CFR 240.19b–4.

(1) Disqualification by Director

After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice.

(2) Removal by Director

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed.

(3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known a the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(e) Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and the Rule 10000 Series to facilitate the appointment of arbitration panels and the resolution of arbitration disputes.

(f) Challenges by Customers

In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer.

* * * * *

Rule 10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators *must* [should] disclose any such relationships or circumstances that they have with any party or its counsel, or with any individual whom they have been told will be a witness. They *must* [should] also disclose any such relationship or circumstances involving members of their families or their current employers, partners, or business associates.

(b) Persons who are requested to accept appointment as arbitrators *must* [should] make a reasonable effort to inform themselves of any interests, relationships or circumstances described in paragraph (a) above.

(c) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(d) Removal by Director

(1) The Director may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information not known to the parties when the arbitrator was selected. The Director's authority under this subparagraph (2) may be exercised only by the Director or the President of NASD Dispute Resolution.

(3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

* * * * *

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

In its filing with the Commission, the 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. The 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

The NASD represents that the proposed rule change would amend Rules 10308 and 10312 of the Code to: (1) Modify the definitions of public and non-public arbitrators to further ensure that individuals with significant ties to the securities industry are not able to serve as public arbitrators; (2) provide specific standards for deciding challenges to arbitrators for cause; and (3) clarify that compliance with arbitrator disclosure requirements is mandatory.

Background

In July 2002, the SEC retained Professor Michael Perino to assess the adequacy of NASD (and New York Stock Exchange) arbitrator disclosure requirements, and to evaluate the impact of the recently adopted California Ethics Standards [3] on the current conflict disclosure rules of the self-regulatory organizations (SROs). The SEC released professor Perino's report, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations (Perino Report), on November 4, 2002.*

The Perino Report concluded that undisclosed conflicts of interest were not a significant problem in SRO-sponsored arbitrations. Specifically, the Perino Report concluded that adoption of the California Ethics Standards by SROs would yield very few benefits to parties, but would impose significant costs and could have significant unintended consequences that might reduce investors' perception of the fairness of SRO arbitrations. However, the Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Perino Report, might ''provide additional assurance to investors that arbitrations are in fact neutral and fair.''

[3] California Rules of Court, Division VI of the Appendix, entitled, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration.''

This rule change would implement those recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations.

Definition of Public and Non-Public Arbitrators

The Code classifies arbitrators as public or non-public (*i.e.,* ''industry''). When investors have a dispute with member firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a panel consisting of either a single public arbitrator, or a majority public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.

Rule 10308(a)(5) of the Code defines ''public'' arbitrators as persons who are qualified to serve as arbitrators and who are not either personally engaged in certain activities that would make them non-public, or the immediate family member of a person engaged in such activities. Specifically, under Rule 10308(a)(4) of the Code, a person is currently classified as a non-public arbitrator if he or she:

(A) Is, or within the past three years, was:

- Associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
- Registered under the Commodity Exchange Act;
- A member of a commodities exchange or a registered futures association; or
- Associated with a person or firm registered under the Commodity Exchange Act;

(B) Is retired from engaging in any of the business activities listed in subparagraph (4)(A).

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A);

(D) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities; or

(E) Is the immediate family member of anyone who meets the criteria above.

Rule 10308(a)(5) of the Code currently defines ''immediate family member'' to include spouses of non-public arbitrators, as well as family members who share a home with, receive substantial financial support from, or are declared as dependents for federal income tax purposes by, non-public arbitrators.

The proposed rule change would amend these definitions in several ways to further ensure that individuals with significant ties to the securities industry are not able to serve as public arbitrators. Specifically, the proposed rule change would amend the definition of non-public arbitrator in Rule 10308(a)(4) of the Code to:

- Increase from three years to five years the period for transitioning from an industry to public arbitrator; and
- Clarify that the term ''retired'' from the industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the proposed rule change would amend the definition of public arbitrator in Rule 10308(a)(5)(A) of the Code to:

- Prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how may years ago the association ended;
- Exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator; and
- Provide that investment advisers may not serve as public arbitrators, and many only serve as non-public arbitrators if they otherwise qualify unde Rule 10308(a)(4) of the Code.

The proposed rule change would also significantly amend the definition of ''immediate family member'' in Rule 10308(a)(5)(B) of the Code to further ensure that individuals with significant, albeit indirect, tries to the securities industry may not serve as public arbitrators. The Perino Report recommended that NASD expand the definition of ''immediate family member'' to include parents and children, even if the parent or child does not share a home with or receive substantial support from, a non-public arbitrator. Although the Perino Report referred only to parents and children, NASD believes that the same rationale applies to stepparents and stepchildren, and therefore recommends including such relationships in the definition as well. And, although the Perino Report did not address the issue, NASD believes that it is consistent with the Perino Report recommendations to amend the definition of the term ''immediate family member'' to also include anyone, related or not, who is a member of the household of a non-public arbitrator.

Standard for Deciding Challenges for Cause

Rules 10308(d) and 10312(d) of the Code provide that under certain circumstances, the Director of NASD Dispute Resolution may remove an arbitrator upon request of a party or under the Director's own initiative. Rule 10308(d)(1) of the Code provides that, before the first hearing session, if a party objects to the continued service of an arbitrator, the Director may disqualify an arbitrator if the Director determines that the arbitrator should be disqualified. Rule 10312(d)(1) of the Code provides that the Director may remove an arbitrator from a panel based on information that must be disclosed pursuant to the rule. Under both rules, once the first hearing session has begun, the Director may only remove an arbitrator based on information that was required to be disclosed under Rule 10312 of the Code but was not previously disclosed.

The Code does not provide a specific standard for deciding whether an arbitrator should be removed under these provisions. However, the NASD Arbitrator's Manual states that such challenges:

> will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.[4]

The Perino Report noted that including this standard in the Code would provide greater transparency with respect to challenges for cause, and would enhance the parties' confidence that all challenges for cause will be granted or denied on the same basis. Therefore, NASD is amending Rule 10308(d) of the Code and Rule 10312(d) of the Code to provide that in deciding challenges for cause, the Director will apply the standard described above.

In addition, based on the recommendation of the Perino Report, NASD is amending Rule 10308 of the Code to add a new paragraph (f) providing that, consistent with both NASD current practice and the New York Stock Exchange's Guidelines for Classifying Arbitrators, close questions regarding arbitrator classification or

[4] As the Perino Report noted, this is essentially the same standard followed by the New York Stock Exchange.

challenges for cause brought by a public customer will be resolved in favor of the customer.

Arbitrator Duty To Disclose and Update Conflict Information

Rule 10312(a) of the Code currently provides that arbitrators ''shall be required to disclose'' any circumstances which might preclude an arbitrator from rendering an objective and impartial determination, and enumerates specific personal, and professional and financial information that ''should'' be disclosed under the rule. Rule 10312(b) of the Code provides that arbitrators ''should'' make a reasonable effort to inform themselves of any such conflicts. Rule 10312(c) of the Code provides that the duties imposed by paragraphs (a) and (b) are ongoing, and that arbitrators must disclose at any stage of the proceeding any such information that arises, is recalled or discovered.

While NASD has always interpreted Rule 10312 of the Code to impose a mandatory duty on arbitrators to disclose the required information, and to update their disclosure, the Perino Report noted that the use of the term ''should'' in paragraphs (a) and (b) of the Rule may create the misimpression that disclosing and updating the information are merely recommended, but not required. Therefore, to eliminate any possible misunderstanding or confusion, NASD is amending Rule 10312(a) and (b) of the Code to clarify that arbitrators ''must'' disclose the required information and ''must'' make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[5], 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 believes that, by providing further assurance to parties that individuals with significant ties to the securities industry are not able to serve as public arbitrators in NASD arbitrations, the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD's arbitration forum.

[5] 15 U.S.C. 78*o*–3(b)(6).

(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.

(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 35 days of the date of publication of this notice in **Federal Register** or within such longer period (i) as the Commission may designate up to 90 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 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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–95 and should be submitted by September 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21402 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48358; File No. SR–NASD–2003–111]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

August 15, 2003.

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 July 17, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its 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 Nasdaq. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing a pilot program for a one-year period to reduce the price and simplify the structure of the fees assessed for the Nasdaq ViewSuite products under Rule 7010(q). Nasdaq proposes to implement this rule change effective as of September 15, 2003. Proposed new language is italicized.[4]

* * * * *

[6] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 8, 2003.

[4] The Commission made certain edits to the notice submitted by Nasdaq as part of Amendment No. 1 to conform it to the changes made to the Form 19b–4. Telephone conversation between Eleni Constantine, Office of General Counsel, Nasdaq and