SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54607; File No. SR-NASD-2005-094)

October 16, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration Procedure

I. Introduction

On June 17, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NASD Rule 10308 relating to the classification of arbitrators as non-public or public.[3] On August 5, 2005, NASD filed amendment No. 1 to the proposed rule.[4] The proposed rule change, as amended, was published for comment in the Federal Register on August 30, 2005,[5] and the Commission received 65 comments on the proposal.[6] The majority of

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

2 17 CFR 240.19b-4.

3 On September 6, 2006, the Commission approved similar amendments to NYSE Rule 607 (SR-NYSE-2005-43) (the "NYSE Rule Change"), which also governs securities industry and public arbitrators. The NYSE Rule Change will become effective on Dec. 13, 2006, which is 90 days after the Commission's approval order was published in the Federal Register. See Exchange Act Release No. 54407 (Sept. 6, 2006), 71 FR 54102 (Sept. 13, 2006).

4 The amendment clarified the rule's text and purpose, and revised the effective date of the rule. NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval. The effective date will be no later than 60 days following publication of the Notice to Members announcing Commission approval.

5 See Exchange Act Release No. 52332 (Aug. 24, 2005), 70 FR 51395 (Aug. 30, 2005) (the "Notice").

6 Richard H. Levenstein, Kramer, Sopko & Levenstein, P.A., Feb. 1, 2006 ("Levenstein"); Les Greenberg, Law Offices of Les Greenberg, Oct. 9 2005 ("Greenberg"); Bradford D.

Kaufman, Greenberg Traurig, Oct. 7, 2005 ("Kaufman"); Jonathan L. Hochman, Schindler Cohen & Hochman LLP, Sept. 30, 2005 ("Hochman"); Jonathan W. Evans, Jonathan W. Evans and Associates, Sept. 21, 2005 ("Evans"); Scot Bernstein, Sept. 21, 2005 ("Bernstein"); John W. Barnes, Sept. 21, 2005 ("Barnes"); L. Jerome Stanley, Sept. 20, 2005 ("Stanley"); Dale Ledbetter, Ardorno & Yoss, Sept. 20, 2005 ("Ledbetter"); Randall R. Heiner, Sept. 20, 2005 ("Heiner"); Sam T. Brannan, Page Perry, LLC, Sept. 20, 2005 ("Brannan"); Jason R. Doss, Page Perry, LLC, Sept. 20, 2005 ("Doss"); William B. Langenbacher, Sept. 20, 2005 ("Langenbacher"); Steve Parker, Page Perry, LLC, Sept. 20, 2005 ("Parker"); Jeffrey D. Pederson, Sept. 20, 2005 ("Pederson"); Martin Seiler, Sept. 20, 2005 ("Seiler"); Brian Greenman, Sept. 20, 2005 ("Greenman"); Teresa M. Gillis, Shustak Jalil & Heller, Sept. 20, 2005 ("Gillis"); William F. Davis, Sept. 20, 2005 ("Davis"); David Harrison, Spivak & Harrison, Sept. 20, 2005 ("Harrison"); Susan N. Perkins, Sept. 20, 2005 ("Perkins"); Mitchell S. Ostwald, Law Offices of Mitchell S. Ostwald, Sept. 20, 2005 ("Ostwald"); Scot D. Bernstein, Law Offices of Scot D. Bernstein, Sept. 20, 2005 ("Bernstein"); William F. Galvin, Commonwealth of Massachusetts, Sept. 20, 2005 ("Galvin"); William P. Torngren, Law Offices of William P. Torngren, Sept. 20, 2005 ("Torngren"); Charles C. Mihalek and Steven M. McCauley, Charles C. Mihalek, P.S.C., Sept. 20, 2005 ("Mihalek"); Timothy A. Canning, Sept. 20, 2005 ("Canning"); Laurance M. Landsman, Block & Landsman, Sept. 20, 2005 ("Landsman"); Steven J. Gard, Gard Smiley Bishop & Dovin LLP, Sept. 20, 2005 ("Gard"); Scott L. Silver, Blum & Silver, P.A., Sept. 20, 2005 ("Silver"); G. Mark Brewer, Brewer Carlson, LLP, Sept. 20, 2005 ("Brewer"); John D. Hudson, Sept. 20, 2005 ("Hudson"); Joel A. Goodman, Kalju Nekvasil, Steven Krosschell, and Jennifer Newsom, Goodman & Nekvasil, P.A., Sept. 20, 2005 ("Goodman"); Jill I. Gross, Barbara Black, and Per Jebsen, Pace Investor Rights Project, Sept. 20, 2005 ("Gross"); Royal B. Lea, III, Bingham & Lea, and Randall A. Pulman, Pulman, Bresnahan & Pullen, LLP, Sept. 19, 2005 ("Lea"); Richard P. Ryder, Securities Arbitration Commentator, Inc., Sept. 19, 2005 ("Ryder"); Alan C. Friedberg, Pendelton, Friedberg, Wilson & Hennessey, P.C., Sept. 19, 2005 ("Friedberg"); Robert K. Savage, Savage Law Firm, P.A., Sept. 19, 2005 ("Savage"); Michael Chasen, Sept. 19, 2005 ("Chasen"); Adam S. Doner, Sept. 19, 2005 ("Doner"); Jan Graham, Graham Law Offices, Sept. 19, 2005 ("Graham"); Frederick W. Rosenberg, Sept. 19, 2005 ("Rosenberg"); Debra G. Speyer, Law Offices of Debra G. Speyer, Sept. 19, 2005 ("Speyer"); Andrew Stoltmann, Stoltmann Law Offices, P.C., Sept. 19, 2005 ("Stoltmann"); Al Van Kampen, Rohde & Van Kampen PLLC, Sept. 19, 2005 ("Van Kampen"); Elliott Goldstein, Sept. 19, 2005 ("Goldstein"); W. Scott Greco, Greco & Greco, P.C., Sept. 18, 2005 ("Greco"); Barry D. Estell, Sept. 18, 2005 ("Estell"); Charles W. Austin, Jr., C. W. Austin, Jr. P.C., Sept. 17, 2005 ("Austin"); Robert C. Port, Cohen Goldstein Port & Gottlieb, LLP, Sept. 16, 2005 ("Port"); Kurt Arbuckle, Sept. 16, 2005 ("Arbuckle"); Bill Fynes, Sept. 15, 2005 ("Fynes"); Jeffrey A. Feldman, Sept. 15, 2005 ("Feldman"); Jay H. Salamon, Hermann, Cahn & Schneider LLP, Sept. 14, 2005 ("Salamon"); Steven B. Caruso, Maddox Hargett & Caruso, P.C., Sept. 14, 2005 ("Caruso"); Jorge A. Lopez, Law Offices of Jorge A. Lopez, P.A., Sept. 14, 2005 ("Lopez"); Michael J. Willner, Miller Faucher And Cafferty LLP, Sept. 13, 2005 ("Willner"); Jeffrey S. Kruske, Law Offices of Jeffrey S. Kruske, P.A., Sept. 13, 2005 ("Kruske"); Richard M. Layne, Layne Lewis, LLP, Sept. 13, 2005 ("Layne"); John Miller, Law Offices of John J. Miller, P.C., Sept. 13, 2005 ("Miller"), Herb Pounds, Sept. 13, 2005 ("Pounds"); Laurence S. Schultz, Driggers, Schultz & Herbst, Sept. 12, 2005 ("Schultz"); Rosemary J. Shockman, Public Investors Arbitration Bar Association, Sept. 9, 2005 ("PIABA");

commenters are lawyers that represent investors in arbitrations. This order approves the proposed rule change as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to amend the arbitrator classification criteria in Rule 10308 of the NASD Code of Arbitration Procedure ("Code") to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations.

The Code classifies arbitrators as public or non-public. When investors have a dispute with member firms or associated persons in NASD arbitration that involves claims of no more than $50,000, they are entitled to have their cases heard by a panel consisting of one public arbitrator or, if the dispute involves a claim of more than $50,000, a panel consisting of two public arbitrators and one non-public arbitrator.[7]

Under current NASD Rule 10308(a)(4), a person is classified as a non-public arbitrator if he or she:

(A) is, or within the past 5 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;

Seth E. Lipner, Baruch College and Deutsch & Lipner, Sept. 8, 2005 ("Lipner"); and Scott I. Batterman, Clay Chapman Crumpton Iwamura and Pulice, Aug. 30, 2005 ("Batterman").

[7] NASD Rule 10308(b)(1). The panel composition for intra-industry disputes (not involving any parties who are investors) is governed by NASD Rule 10202. Depending on the nature of the dispute, intra-industry panels may consist of all public arbitrators, all non-public arbitrators, or a majority of public arbitrators. The arbitrator classification provisions of NASD Rule 10308 apply to all such panels.

(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 two 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.

Current NASD Rule 10308(a)(5) sets forth the criteria for public arbitrators. In particular, a person is allowed to serve as a public arbitrator if he or she is not engaged in the conduct described in paragraphs (A) through (D) of NASD Rule 10308(a)(4), was not engaged in that conduct for 20 or more years, is not an investment adviser, and is not "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)."[8] The current rule also excludes the spouse or an immediate family member of a person engaged in the conduct described in paragraphs (A) through (D) of NASD Rule 10308(a)(4) from serving as a public arbitrator.[9]

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[8] NASD Rule 10308(a)(5)(A)(i)-(iv).

[9] NASD Rule 10308(a)(5)(A)(v).

In order to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations, NASD proposed to amend the definition of public arbitrator to exclude individuals who work for, or are officers or directors of, an entity that controls, is controlled by, or is under common control with a partnership, corporation, or other organization that is engaged in the securities business.[10] The amendment also applies to individuals who have a spouse or immediate family member who works for, or is an officer or director of, an entity that is in such a control relationship with a partnership, corporation, or other organization that is engaged in the securities business, such as a broker-dealer. Under the current rule, such individuals may be considered public arbitrators. For example, a person who works for a real estate firm that is under common control with, and perhaps shares the same corporate name of, a broker-dealer may be classified as a public arbitrator under current rules. Because investors may view such an arbitrator as not truly "public," NASD proposed to revise the definition of public arbitrator as described above.

In addition, NASD proposed to revise the definition of non-public arbitrator to clarify that persons who are registered with a broker-dealer may not be classified as public arbitrators.

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[10] For purposes of this rule, the term "control" has the same meaning that it has for purposes of Form BD, which broker-dealers use to register with NASD and to make periodic updates. Specifically, control is defined as:

> The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.

See Uniform Application for Broker-Dealer Registration (Form BD).

Under current rules, arbitrators who are associated with a broker or dealer are considered non-public. In the financial services industry, it is not uncommon for a person to be employed by one company (such as a bank or insurance company) and to be registered to sell securities through another company (such as an affiliated broker-dealer). NASD believes that there may be some uncertainty among arbitrators who work for entities in a control relationship with a broker-dealer as to whether they are associated with a broker-dealer for purposes of NASD Rule 10308, even though they are registered with the broker-dealer. Because the definition of "person associated with a member" in the NASD By-Laws includes persons who are registered with a broker-dealer, regardless of their status as employees, such persons are considered non-public arbitrators. Therefore, NASD proposes to amend the definition of non-public arbitrator to specifically include anyone registered with a broker-dealer.[11]

III. Summary of Comments

The Commission received 65 comments on the proposal.[12] Several commenters believed that the changes proposed were laudatory.[13] Many viewed the proposed amendments as insufficient to address what they considered to be an arbitration process that is unfair to investors. Their concerns generally centered in three areas: (1) the inclusion of any non-public

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[11] For purposes of NASD Rule 10308(a)(4)(A)(i), the term "including" is expanding or illustrative, not exclusive or limiting. The use of the term "including but not limited to" in NASD Rule 10321(d) of the Code is not intended to create a negative implication regarding the use of "including" without the term "but not limited to" in NASD Rule 10308(a)(4)(A)(i) or other provisions of the Code.

[12] See footnote 6.

[13] See, e.g., Barnes, Chasen, Gross, Kaufman, Lipner, PIABA, Pounds, and Rosenberg.

arbitrators on arbitration panels; (2) the criteria for qualifying as a non-public or public arbitrator; and (3) the desire to harmonize NASD and NYSE rules on this issue.[14]

Inclusion of Non-Public Arbitrators

The majority of commenters expressed the view that the mandatory inclusion of arbitrators who are involved in the securities industry on arbitration panels creates an unfair burden for investors seeking redress, and stated that arbitration panels should be comprised only of individuals with no ties to the securities industry.[15] A number of commenters maintained that the mandatory inclusion of non-public arbitrators creates a perception that the process is unfair and biased against investors,[16] and some suggested eliminating the non-public arbitrator.[17]

Two commenters stated that any required securities industry expertise should come from expert testimony, thereby negating the need for a non-public arbitrator on a panel.[18] Another commenter opined that non-public arbitrators face pressure from their firms to prevent or to

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[14] Many of these comments also applied to the NYSE Rule Change and were also addressed by the NYSE. See Letter from Mary Yeager, Assistant Secretary, NYSE, to Katherine A. England, Assistant Director, SEC, dated June 5, 2006, available at: http://www.sec.gov/rules/sro/nyse/nyse200543/myeager060506.pdf.

[15] See, e.g., Arbuckle, Austin, Barnes, Bernstein, Brewer, Canning, Caruso, Chasen, Davis, Doner, Doss, Estell, Evans, Feldman, Friedberg, Fynes, Gard, Gillis, Goldstein, Goodman, Graham, Greco, Greenman, Harrison, Heiner, Hudson, Kampen, Kruske, Landsman, Langenbacher, Layne, Lea, ledbetter, Levenstein, Lipner, Lopez, Mihalek, Miller, Ostwald, Parker, Pederson, Perkins, PIABA, Port, Pounds, Salamon, Savage, Schultz, Seiler, Silver, Stoltmann, Torngren, and Willner.

[16] See, e.g., Galvin, Gillis, Greco, Greenberg, Harrison, Heiner, Lopez, Salamon, Torngren, and Willner.

[17] See, e.g., Davis, Harrison, Ostwald, and Torngren.

[18] Brannan and Lopez.

reduce damage awards against the securities industry.[19] One commenter stated that overturning the factual findings of an arbitration panel on appeal is significantly more difficult than overturning the factual findings of a jury, and thus it is critical to establish the objectivity of panel members by removing the non-public arbitrator.[20] Another commenter stated that arbitration should be voluntary because, in his view, non-public arbitrators are inherently biased.[21]

Criteria for Non-Public and Public Arbitrators

Several commenters also stated that the proposed rule change would neither adequately preclude persons with ties, either directly or through their firms, to the securities industry from meeting the definition of public arbitrator, nor would it thoroughly include such people within the definition of non-public arbitrator.[22] In particular, commenters criticized two existing provisions in the current Rule. First, they commented that current NASD Rule 10308(a)(4)(C) defines a non-public arbitrator to include any attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to brokerage or commodity firms or their associated persons. Second, they noted that current NASD Rule 10308(a)(5)(A)(iv) provides that an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from brokerage or commodity firms or their associated persons is precluded from being a public arbitrator.

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[19] Feldman.

[20] Pederson.

[21] Mihalek.

[22] See, e.g., Caruso, Evans, Galvin, Lipner, Lopez, and PIABA.

One commenter stated that the definition of non-public arbitrator should be amended to remove the 20 percent threshold and instead include all attorneys, accountants or other professionals who have devoted "any" work to the securities industry.[23] Another opined that both the 20 percent and 10 percent limitations are too liberal and they fail to address the conflicts these professionals are subject to.[24] In this commenter's view, public arbitrators should have no role in representing securities or commodities firms.

One commenter stated that the 10 percent threshold "is arbitrary and has no practical or legal significance."[25] The commenter stated that large law firms may represent securities industry clients that generate millions of dollars in fees, but still may not exceed 10 percent of the firm's revenues. It further stated that "an attorney who represents industry clients which comprise less than 10 percent of the firm's annual revenue in the past two years, has the same obligation, commitment and duty of loyalty to the client as does the attorney with clients who equal or exceed the 10 percent limit."[26] Another commenter stated that "an attorney whose firm represents any securities industry clients is inescapably subject to the securities industry influence regardless of the percentage of industry business."[27] This commenter remarked that even firms with a small percentage of securities industry business would like to have more.

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[23] Caruso. The commenter noted that the preclusion should apply to individuals that have represented clients in the securities industry for the last 5 years. NASD Rule 10308(a)(4)(C) currently applies only to activities in the last two years.

[24] Galvin.

[25] PIABA.

[26] Id.

[27] Bernstein.

Some commenters recommended eliminating the 10 percent threshold and, as a result, excluding from the definition of public arbitrator all attorneys, accountants or other professionals whose firms have derived any revenue form the securities industry in the last two years.[28] Two commenters opined that at a minimum NASD should remove all defense lawyers who represent the securities industry from the pool of public arbitrators.[29]

Harmonizing NYSE and NASD Rules

One commenter expressed concern that the proposed rule change would "differ significantly" from the Uniform Code of Arbitration ("UCA") classification rule, and stated that NASD's proposed rule change and the NYSE Rule Change should have been "brought to the Commission with the same text after being vetted by SICA" (the Securities Industry Conference on Arbitration).[30] In this commenter's view, the Commission should compel NASD and the NYSE to develop "identical solutions" to this issue.[31]

IV. NASD Response to Comments

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[28] Evans, Bernstein, PIABA, and Schultz.

[29] Feldman and Lipner.

[30] Ryder.

[31] Id. In particular, this commenter highlighted the differences in relatives who would be considered an "immediate family member" under each rule. The NASD proposal would exclude immediate family members of all control-related parties from serving as public arbitrators, while the NYSE Rule Change excluded only immediate family members of associated persons. The NASD proposal also would include step-relatives, while the NYSE Rule Change did not. Finally, the NASD proposal does not include in-laws within the definition of control-related parties, while the NYSE Rule Change did not.

As a preliminary matter, NASD stated that suggestions that non-public arbitrators should be eliminated from arbitration panels were beyond the scope of the rule filing, which applies to the classification of arbitrators and not the composition of arbitration panels.[32]

NASD also stated that the current definitions of non-public arbitrator and public arbitrator, in conjunction with the proposed rule change, will properly exclude individuals with significant ties to the securities industry from being classified as public arbitrators.[33] It stressed that the proposed rule change eliminates from the definition of public arbitrator both persons with "actual bias" and those "perceived as being biased." NASD noted that its rules already prohibit professionals from serving as public arbitrators if they have devoted 20 percent or more of their work in the last two years to securities industry clients. It also stated that it has taken the additional step in the current rule to exclude from the definition of public arbitrator professionals whose firm derived 10 percent or more of its annual revenue in the past two years from securities industry clients.[34]

NASD further commented that it is not necessary for its rules with respect to the classification of arbitrators to be identical to those of the NYSE, and noted existing differences,

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[32] See letter from John D. Nachmann, Counsel, NASD, to Lourdes Gonzalez, Assistant Chief Counsel – Sales Practices, SEC, dated Aug. 23, 2006, available at: http://www.sec.gov/rules/sro/nasd/nasd2005094/nasd2005094-65.pdf.

[33] Id.

[34] Id. NASD noted that its rules already prohibit the following individuals from serving as public arbitrators: (1) anyone associated with securities industry during the past five years, (2) anyone who has spent 20 or more years in the securities industry, and (3) anyone who is the spouse or immediate family member of a person who is associated with the securities industry. NASD Rules 10308(a)(4)-(5).

such as the 10 percent threshold for certain professionals, between its rules and the NYSE rule.[35] Regarding the proposed amendment to prohibit certain family members or relatives of certain family members who work for a controlled entity from serving as public arbitrators, NASD stated that it drafted this proposal to ensure that individuals with significant ties to the securities industry do not serve as public arbitrators.[36]

V. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6)[37] of the Act, which require, among other things, NASD's rules to 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.[38]

The Commission believes that the proposed rule change will promote the public interest by limiting certain people who have ties to the securities industry from serving as public arbitrators. In particular, by expanding the list of entities controlled by companies engaged in the securities business, the rule will further limit the industry ties the public arbitrator may have. The inclusion of immediate family members within the list of controlled parties who may not be

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35 Similar to the current NASD Rule 10308(a)(4)(C), NYSE Rule 607(A)(2)(iv) defines an industry arbitrator to include any attorney, accountant or other professional who has devoted 20 percent or more of his or her work to securities industry clients within the last two years.

36 Id.

37 15 U.S.C. 78o-3(b)(6).

38 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

public arbitrators should have a similar result.[39] In addition, reminding persons registered with broker-dealers that they are associated persons of a broker-dealer should further assist in the correct classification of these persons as non-public arbitrators.[40]

The Commission appreciates the comments suggesting the elimination of non-public arbitrators, and the further restriction on persons who have any ties to the securities industry from serving as public arbitrators. While these comments are beyond the scope of this rule filing, they raise important questions regarding the arbitration process. We understand that SICA is actively considering proposals from its membership regarding these issues. We note that NASD has stated that it will review any rule regarding panel composition that SICA adopts to the UCA, and that it is considering further amendments to the definitions of public arbitrator and non-public arbitrator.[41]

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39 Section 19(b)(2) of the Act requires the Commission to approve a proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act, and the applicable rules and regulations thereunder. This standard does not require NASD rules to be identical to rules adopted by the NYSE or by SICA.

40 The Commission notes that persons employed by a broker-dealer (other than in a clerical or ministerial capacity) are associated persons of a broker-dealer as defined in Section 3(a)(18) of the Act.

41 Telephone conversation between John D. Nachmann, Counsel, NASD, and Michael Hershaft, Special Counsel, SEC (Oct. 3, 2006).

VI. CONCLUSION

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[42] that the proposed rule change, as amended (SR-NASD-2005-094), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Nancy M. Morris
Secretary

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[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30-3(a)(12).