

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.

The NASD has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the TAF pilot to operate without interruption through April 15, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 number SR-NASD-2003-65 and should be submitted by May 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47631; File No. SR-NASD-2003-64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend for an Additional Six-Month Period a Pilot Rule To Require Industry Parties in Arbitration To Waive Application of Contested California Arbitrator Disclosure Standards, Upon the Request of Customers and Associated Persons With Claims of Statutory Employment Discrimination

April 3, 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 March 31, 2003, 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 and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon receipt of this filing by 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 is proposing to extend the pilot rule in IM-10100, paragraphs (f) and (g), to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for a six-month pilot period.

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. 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 proposed rule change extends for an additional six months a pilot rule that was approved by the Commission for a six-month period ending March 30, 2003.⁴ NASD's statement of purpose is contained in the Commission's Approval Order. In that Approval Order, at footnote 9, the Commission stated:

If the outcome of the lawsuit is that the California Standards do not apply to NASD arbitration, waivers would no longer be necessary. Cases in which arbitrators were appointed pursuant to waivers would continue to their conclusion. If the lawsuit has not concluded at the expiration of the six-month pilot period, NASD may request an extension.

The litigation discussed in the Approval Order has not concluded, and NASD now is a party to additional litigation relating to application of the California Standards. Accordingly, NASD is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to NASD arbitration). NASD requests that the pilot be extended for six months beginning on March 31, 2003.

In addition, NASD has made one change to its model waiver agreement. In light of questions raised by practitioners, the first sentence of the waiver agreement has been amended to delete reference to federal or state laws other than the California Standards. NASD proposes to begin using the amended waiver agreement upon the operative date of the pilot extension for all cases in which none of the parties has yet signed the prior NASD waiver agreement. This change will not affect any parties that already have signed the prior NASD waiver agreement, or any cases in which some of the parties have signed the prior NASD waiver agreement. If any party in an ongoing case has signed the prior NASD waiver agreement, then all other parties will use the same agreement.

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002).