

Earlier affirmation would allow broker-dealers and their institutional customers to identify and resolve the exceptions and potential fails much earlier in the settlement cycle.

In the longer term, the combination of TradeSuite's and ESG's systems development expertise and other resources would enable the proposed joint venture to develop and market globally a single integrated "workflow" approach to trade management for both domestic and cross-border transactions. This development would facilitate the industry's goal of achieving straight-through processing, which would help manage the tremendous growth in trading volumes and prepare for the transition to shorter settlement cycles.

In addition, the DTC resources to be transferred to the GJV or provided to the GJV pursuant to a services contract are for the most part resources that are already fully dedicated to the TradeSuite Business. Therefore, implementation of the subject proposal will not deprive DTC of resources needed for it to provide its other services in a safe and sound manner. Furthermore, all existing services of the TradeSuite and ESG Businesses will continue uninterrupted during and after the transfer to the GJV.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>13</sup> and the rules and regulations thereunder applicable to DTC because the implementation of the subject proposal will facilitate the prompt and accurate clearance and settlement of institutional transactions.

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

The proposed rule change will not impose any burden on competition. The proposed joint venture will serve members of the securities industry and will be governed by its users. DTCC (which itself is owned by, and whose board represents, users) will own 50.1% of the GJV Class A Interests and only Class A Interests will have the right to vote on matters relating to the U.S. regulated aspects of the GJV's activities that are submitted to Interestholders.<sup>14</sup> The GJV board of directors will be composed of eight Managers, seven of

whom shall be voting Managers and one of whom, the President of the GJV, shall be a non-voting Manager. Of the seven voting Managers, two will be appointees of DTCC and may be DTCC directors or officers ("DTCC Board Representatives"). Two voting Managers will be appointed by TISI and IAG, acting jointly. The remaining three voting Managers will be representatives of the global securities industry, two of whom will be nominees of DTCC. Board decisions involving U.S. regulated aspects of the GJV's business will require the affirmative vote of at least one of the two DTCC Board Representatives. In addition, the approval of both Interestholders will be required for many significant matters.

The purpose of the joint venture will be to introduce significant efficiencies into trade processing by combining two existing businesses with complementary positions and strengths. The joint venture will combine these two businesses to offer the securities industry an integrated system for trade processing which will assist firms in dealing with unprecedented levels of securities trading. The joint venture will also be a positive response to the expected industry and regulatory mandate to reduce settlement cycles worldwide and thereby to reduce risk affecting the national clearance and settlement system.

The joint venture will cooperate with other post-trade presettlement processing systems in order to achieve interoperability.

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

Written comments on the proposal from DTC participants or others have not yet been solicited or received.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to file No. SR-DTC-00-10 and should be submitted by December 8, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43535; File No. SR-NASD-00-65]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Rule 10334 of the NASD Code of Arbitration Procedure**

November 8, 2000.

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> notice is hereby given that on November 3, 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

<sup>15</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>13</sup> 15 U.S.C. 78q-1.

<sup>14</sup> The GJV Class B Interests, which will have the right to vote on matters that do not relate to U.S. regulated aspects as well as to share in the GJV's profits attributable to its domestic business, will be owned 50% by DTCC, 45% by TISI, and 5% by IAG. The GJV Class C Interests, which will have the right to vote on matters that do not relate to U.S. regulated aspects as well as to share in the GJV profits attributable to its foreign business, will be owned 50% by DTCC and 50% by IAG.

("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. NASD Dispute Resolution has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> 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 Dispute Resolution is proposing to: (1) Amend Rule 10334 of the Association's Code of Arbitration Procedure ("Code") to accelerate the expiration date of the Rule from August 1, 2002 to December 31, 2000; (2) to delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334; and (3) renumber Rules 10205 and 10332 accordingly. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 10334. Procedures for Large and Complex Cases

- (a) through (g) Unchanged.  
(h) Temporary Effectiveness.

This Rule shall remain in effect until [August 1, 2002] *December 31, 2000*, unless modified or extended prior thereto by the Board of Governors.

\* \* \* \* \*

#### 10205. Schedule of Fees for Industry and Clearing Controversies

- (a) through (h) Unchanged.

[(i) If an eligible matter is submitted for arbitration as a large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.]

- [(j)] *(i) Schedule of Fees.*  
(Remainder unchanged).

\* \* \* \* \*

#### 10332. Schedule of Fees for Customer Disputes

[(h) If an eligible matter is submitted for arbitration as a large and complex

case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.]

- [(i)] *h Schedule of Fees.*  
(Remainder unchanged).

\* \* \* \* \*

### 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 Dispute Resolution 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 Dispute Resolution 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

Rule 10334 of the Code establishes certain optional procedures for handling and managing large and complex ("LAC") cases, defined as those involving claims of \$1 million or more. Specifically, the Rule provides for an administrative conference at the outset of the case, a preliminary hearing before an arbitrator to resolve discovery and other disputes, and the opportunity for parties to select arbitrators through preferential rankings. Use of the Rule results in higher filing fees and deposits for claimants than proceeding under the general provisions of the Code.

The Rule was adopted for a one-year pilot period in 1995. At that time, the procedures established by the Rule were not available in other arbitration cases. In 1997, the NASD amended the Rule to make certain of its provisions voluntary, which had been mandatory. At the same time, the NASD extended the Rule for five years to provide enough time to determine whether parties would use the Rule more frequently as amended. In its rule filing, the NASD noted that few parties were electing to proceed under the Rule. Parties elected to proceed under the Rule in only 43 of the 880 cases from May 2, 1995 until January 28, 1997 that were eligible for treatment under the Rule. The few parties who did elect to proceed under the Rule

apparently did so to take advantage of the availability of a list selection procedure for the appointment of arbitrators. The NASD found that parties were deterred from using the Rule by the higher fees it required.

Since then, changes to the Code and to NASD Dispute Resolution practices have extended the most important of the procedures established by Rule 10334 to all cases, including the selection of arbitrators through preferential rankings. The benefits of the administrative conference and the preliminary hearing are available through the Initial Pre-hearing Conference that is now held in almost all cases. Moreover, the discovery process has been significantly enhanced with the recent adoption of the Discovery Guide.

As a result of these changes, use of the Rule has decreased significantly from its already low 1997 level. Through July 31st of this year, parties have elected to proceed to the administrative conference phase of the LAC process in only 4 out of 366 eligible cases; in 1999, parties did so in only 6 out of 679 cases. More significantly, in none of these cases did the parties elect to proceed under Rule 10334 past the administrative conference stage to discovery, arbitrator selection, and the hearing on the merits. While some of these cases may have settled, it is also probable that once the parties understood that the benefits of the Rule are available under the Code without the higher fees required under the Rule, they elected not to continue to proceed under the Rule. Whatever the reason, no case has gone past the administrative conference stage of Rule 10334 procedures since 1997.

Even though it is rarely used, the Rule requires staff training and resource allocation. It can also be a source of confusion for parties, who may not realize that they can now obtain the principal benefits of the LAC case program without paying the higher fees required under the Rule.

Therefore, given the lack of use of Rule 10334, and the fact that the primary benefits of the Rule are available under general Code procedures at less cost to parties, NASD Dispute Resolution believes that additional time is not needed to determine that the Rule should be sunset. Therefore, the proposed rule change would amend the Rule to accelerate its expiration date to December 31, 2000.

The proposed rule change would also delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies and paragraph

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

(h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate solely to Rule 10334, and renumber Rules 10205 and 10332 accordingly.

## 2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</sup> 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 Dispute Resolution believes that accelerating the expiration date of Rule 10334 will serve the public interest by eliminating an unnecessary, redundant Code provision that confuses parties and results in needless expenditure of NASD Dispute Resolution resources.

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

NASD Dispute Resolution 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 been filed by the Association as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>5</sup> Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until December 31, 2000, more than 30 days from November 3, 2000, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. 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-00-65 and should be submitted December 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43536; File No. SR-NASD-00-48]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Requiring Public Disclosure of Receipt of a Delisting Notice**

November 9, 2000.

#### I. Introduction

On August 10, 2000, the National Association of Securities Dealers Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC"),

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> a proposed rule change that would require an issuer to publicly disclose the receipt of a delisting notice for failure to comply with Nasdaq's continued listing requirements. Notice of the proposed rule change appeared in the **Federal Register** on October 5, 2000.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

Nasdaq proposes to amend Rule 4815(b) and IM 4120-2, "Disclosure of Written Notice of Staff Determination," to require an issuer to make a public announcement through the news media disclosing the receipt of a written staff determination to prohibit continued listing requirements ("Staff Determination") and the rule(s) upon which the Staff Determination was based. The proposal also requires the public announcement to be made as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Additionally, the proposal provides that if the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4820. If the issuer fails to make the public announcement by the time that the Listings Qualification Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

According to Nasdaq, the proposed rule change is designed to require a Nasdaq issuer to publicly disclose the receipt of a written delisting notice for failure to comply with the continued listing requirements. Since Nasdaq does not currently have such a requirement, some Nasdaq issuers publicly disclose the receipt of a Staff Determination while other issuers do not make the disclosure. In this regard, Nasdaq proposes that the public announcement shall not only disclose the receipt of a Staff Determination, but shall also indicate the Marketplace Rule(s) upon which it was based.

Furthermore, Nasdaq proposes that an issuer be required to make the public announcement as promptly as possible, but not more than seven calendar days following the receipt of the Staff

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

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

<sup>3</sup> See Securities Exchange Act Release No. 43383 (September 28, 2000), 65 FR 59480.

<sup>4</sup> 15 U.S.C. 78o(b)(6).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> 17 CFR 200.30-3(a)(12).