

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 Commission has decided to waive the five day notice and designates that the proposal become operative on June 30, 2002, because it is consistent with the protection of investors and the public interest to continue the pilot program uninterrupted and permit the Exchange to continue to evaluate the pilot program in light of changes to the marketplace.

#### 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR-BSE-2002-08 and should be submitted by August 13, 2002.

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. 34-46097A; File No. SR-NASD-2002-69]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Posting of Margin Disclosure and Day-Trading Risk Disclosure Statements on Web Sites; Correction

July 15, 2002.

In FR document No. 02-16257 beginning on page 43364 in the issue of Thursday, June 27, 2002, the title described the filing incorrectly. The title is corrected to read as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46221; File No. SR-NASD-2002-15]

#### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Situations in Which a Suspended, Terminated, or Otherwise Defunct Member or Associated Person Fails To Answer or Participate in an Arbitration Proceeding

July 17, 2002.

#### I. Introduction

On February 1, 2002, 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 ("Commission"), 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 to amend Rule 10314 of the NASD Code of Arbitration Procedure ("Code") to provide default procedures for situations in which a suspended, terminated, or otherwise defunct member or associated person (collectively referred to in this order as "defunct") fails to answer or participate

in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration. The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.<sup>3</sup> The Commission received one comment letter regarding the proposal.<sup>4</sup> NASD Dispute Resolution filed a response to the comment letter with the Commission on July 3, 2002.<sup>5</sup> This order approves the proposed rule change.<sup>6</sup>

#### II. Description of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rule 10314 of the Code to provide an expedited default procedure for certain cases in which a respondent is an associated person whose registration is terminated, revoked, or suspended; a member whose membership has been terminated, suspended, canceled, or revoked; a member that has been expelled from the NASD; or a member that is otherwise defunct. NASD Dispute Resolution represents that the procedures are designed to make it easier for claimants to obtain an award against a defunct party. This award can then be enforced in court. NASD Dispute Resolution states that the proposed rule change would address some concerns discussed in a United States General Accounting Office ("GAO") report that was issued in June 2000.<sup>7</sup>

Under the proposed rule change, if a defunct respondent fails to answer the claim in a timely manner, the claimant may elect to proceed under optional default procedures as to that respondent. If there are several claimants, all must agree to use default procedures. The default procedures may be used against one or more defunct respondents while the rest of the initial

<sup>3</sup> See Securities and Exchange Act Release No. 45818 (April 24, 2002), 67 FR 21789.

<sup>4</sup> See letter from Barbara Black, Professor, and Jill I. Gross, Visiting Professor, Pace Law School, to Secretary, Commission, dated May 21, 2002 ("Pace Letter").

<sup>5</sup> See letter from Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated July 3, 2002 ("NASD Letter").

<sup>6</sup> The NASD Dispute Resolution represents that the proposal will be effective by October 15, 2002. Telephone conversation between Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, and Cyndi Nguyen, Attorney, Division, Commission, on July 8, 2002.

<sup>7</sup> The report is entitled "Securities Arbitration: Actions Needed to Address Problems of Unpaid Awards," Report No. GAO/GGD-00-115 (June 15, 2000) ("GAO Report"). The report is available online at <http://www.gao.gov>.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

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

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

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