

making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-95-8 and should be submitted by July 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35847; File No. SR-NASD-95-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Failure to Honor Settlement Agreements Obtained in Connection With an Arbitration or Mediation

June 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁵ 17 CFR 200.30-3(a)(12)

¹ The NASD originally submitted the proposed rule change on May 10, 1995. The NASD subsequently submitted two minor technical amendments, the text of which may be examined in the Commission's Public Reference Room. See Letters from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC (May 16, 1995 and June 9, 1995). This notice reflects those amendments.

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

The NASD is proposing to amend the Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure ("Resolution") to make the following acts a violation of Article III, Section 1 of the Rules of Fair Practice: (a) A failure to honor a written and executed settlement agreement obtained in connection with an arbitration conducted under the auspices of a Self-Regulatory Organization ("SRO"); and (b) a failure to honor a written and executed settlement agreement obtained in connection with a mediation conducted under the auspices of the NASD. The instant filing also proposes to amend Article VI, Section 3 of the NASD By-Laws to permit the NASD to suspend or cancel the membership or registration of a member or associated person for failing to honor a written and executed settlement agreement obtained in connection with an arbitration or mediation conducted under the auspices of the NASD.

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. Enforcing Settlement Agreements

In connection with the administration of its arbitration program the NASD states that many disputes or claims for damages submitted to arbitration before the NASD, or another SRO forum or the American Arbitration Association ("AAA"), are settled prior to a hearing on the merits. In addition, the NASD is currently developing a mediation program, to be administered in connection with the arbitration program, where parties will be participating in a process that the NASD believes will increase the number of

claims that are settled prior to a hearing.²

The NASD also notes that occasionally members and persons associated with members fail to comply with settlement agreements reached in connection with arbitration proceedings. These settlements may have been reached prior to the hearing on the matter and, as a result, the hearing is canceled only to be rescheduled following a party's failure to honor the settlement. In other cases, matters are settled and claims withdrawn only to be refiled later after a member or associated person fails to honor the agreement.

The NASD is concerned that a failure by a member or associated person to honor a settlement agreement imposes substantial added costs on the prevailing party or parties in the form of delayed recoveries, actions to enforce the agreements and additional fees connected with short-notice cancellation of hearings. The NASD's Arbitration Department also incurs additional costs in rescheduling hearings, and on occasion has had to appoint new arbitrators to hear a matter. In addition, the NASD believes that the credibility of the arbitration process suffers if members and their associated persons are able to delay the resolution of a dispute by failing to honor a settlement agreement.

The Resolution states that "it may be deemed * * * a violation of Article III, Section 1 of the Rules of Fair Practice for a member or person associated with a member to * * * fail to honor an [arbitration] award * * *." The Resolution was adopted in 1973 and has been used to discipline members and associated persons who fail to pay an arbitration award unless they have moved to vacate the award.³ The Resolution applies to awards rendered in NASD arbitrations, as well as arbitrations sponsored by other SROs and the AAA.

The NASD believes that the failure by a member or associated person to honor a settlement agreement entered into in connection with an arbitration proceeding or a mediation should have the same consequences as the failure to pay an arbitration award. Therefore, the NASD is proposing to amend the Resolution to make the failure by a member or associated person to honor a written and executed settlement

² The NASD has separately submitted a proposed rule change relating to the establishment of a Mediation Program. See Securities Exchange Act Release No. 35830 (June 9, 1995).

³ Under the Federal Arbitration Act and many state statutes such a motion to vacate must be filed within 90 days after the award is rendered.