

3. The Funds will hold meetings of shareholders to vote on approval of the Interim Agreements and new investment advisory agreements, on or before the 120th day following July 3, 1995.

4. PMC will bear the cost of preparing and filing this application and the costs relating to the solicitation of the approvals of the Funds' shareholders of the Interim Agreements necessitated by the Reorganization.

5. PMC will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services under the Interim Agreements, PMC will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independent Directors, are satisfied that the services provided by PMC will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mediation of Disputes**

July 19, 1995.

On June 6, 1995,<sup>1</sup> the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup>, and Rule 19b-4 thereunder.<sup>3</sup> The proposed rule change amends the Code of

Arbitration Procedure ("Code")<sup>4</sup> by adding a new Part IV to set forth rules to govern the administration of mediation proceedings ("Mediation Rules") and by amending Sections 37, 43 and 44 of the Code<sup>5</sup> to add fee and other provisions relating to the administration of mediation proceedings.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35830, June 9, 1995) and by publication in the **Federal Register** (60 FR 31522, June 15, 1995). No comment letters were received. This order approves the proposed rule change.

More than 5,500 arbitration cases were filed with the NASD in calendar year 1994, which represents 82 percent of all securities arbitrations filed in all arbitration for a combined (including the American Arbitration Association) and 86 percent of all arbitrations filed with self-regulatory organizations. The volume of arbitration cases has been growing dramatically since the U.S. Supreme Court recognized the enforceability of predispute arbitration agreements with respect to claims arising under the Act<sup>6</sup> and under the Securities Act of 1933.<sup>7</sup>

As the volume of arbitrations has increased, cases have grown more complex and time-consuming such that some of the advantages of arbitration as a low cost and swift alternative to litigation are disappearing. This has led to interest in other forms of alternative dispute resolution that may be less expensive than adversarial proceedings in arbitration or in court. A goal of mediation is to explore and come to a settlement of an outstanding dispute without resort to adversarial adjudication.

**Amendments to Existing Rules**

Record of Sessions. Section 37 of the Code has been amended by adding a new paragraph (b) to prohibit keeping a verbatim record of any mediation session conducted pursuant to the proposed rules. The NASD believes that a verbatim record is not consistent with the methods of mediation: a free-flowing and confidential exchange of views, opinions, proposals and admissions.

Fees. Sections 43 and 44 of the Code have been amended to include fees for NASD mediation sessions. The administrative fees of the NASD set forth in new Subsection 43(i) and 44(j) for administering a mediation will be charged only when there is no Association arbitration pending. When there is no arbitration pending, the NASD will charge each party \$150 under new Subsection 43(i) to administer the mediation of a public customer matter and will charge each party \$250 under new Subsection 44(j) to administer the mediation of an industry matter.

The fees will be assessed for each matter submitted to mediation. Pursuant to new Section 51, discussed below, a matter is deemed submitted to mediation when the Director of Mediation<sup>8</sup> has received an executed mediation Submission Agreement from all parties.<sup>9</sup>

In addition, new Subsections 43(j) and 44(k) obligate the parties to pay all of the mediator's charges, including travel and other expenses. The Submission Agreement will set forth the mediator's charges and these charges will be apportioned equally among the parties unless they agree otherwise. The NASD will estimate initially the mediator's charges based on the anticipated length of the session or sessions. The parties will be required to deposit their proportional share of such estimated charges with the NASD prior to the first mediation session.

The NASD's standard mediator charges will be \$150 per hour, although the parties may agree to pay different charges for a particular mediator. The NASD intends to make its best efforts to make mediators available at the specified hourly rate; however, some qualified mediators may decline to serve unless compensated at a higher rate.

Finally, the mediator's hourly fee for joint sessions (except for the first session) and separate sessions will be assessed for each half hour or portion thereof. In addition, the mediator's hourly rate for separate meetings will be apportioned equally among all parties without regard to the actual amount of time each party has spent with the mediator because all parties should benefit equally from the mediator's efforts in meeting with each party even if the mediator spends more time with one than the other.

<sup>1</sup> The NASD amended the proposed rule change subsequent to its original filing on May 19, 1995. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (June 2, 1995).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶3701 *et seq.*

<sup>5</sup> NASD Manual, Code of Arbitration Procedure, Part III, Secs. 37, 43 and 44, (CCH) ¶¶3737, 3743, 3744.

<sup>6</sup> *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987).

<sup>7</sup> *Rodriguez de Quijas v. Shearson/American Express, Inc.* 490 U.S. 477 (1989).

<sup>8</sup> New Section 50 provides for the appointment of a Director of Mediation ("Director") to administer mediations. See *infra* text accompanying n. 10.

<sup>9</sup> The NASD is developing a standard form mediation Submission Agreement. A copy of the Submission Agreement will be provided to all parties.