

Appeals Committee with the discretion to waive the forum fee established in CBOE Rule 17.50 if the BCC or the Appeals Committee determines that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the BCC or the Appeals Committee is a fine which is less than the total fine initially imposed for the violation. By allowing the BCC and the Appeals Committee to waive the forum fees, the Commission believes that the proposal should enhance the fairness of the CBOE's disciplinary system and help to ensure that appropriate and equitable discipline is imposed under CBOE Rule 17.50.

The Commission believes that it is reasonable for the Exchange to amend CBOE Rule 17.50 to provide that the Exchange department which commenced an action under CBOE Rule 17.50, the person charged, the President of the Exchange, and the Board may require a review by the Board of any determination of the Appeals Committee under CBOE Rule 17.50 by proceeding in the manner provided in CBOE Rule 19.5, "Review." The Commission notes that the provision is similar to the current CBOE rule governing requests for review of BCC determinations.

Finally, the Commission believes that the CBOE's proposal to make nonsubstantive changes to CBOE Rule 17.50(g)(1) is consistent with the Act because it is designed to clarify the rule.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to establish procedures applicable to appeals of fines imposed pursuant to CBOE Rule 17.50(g)(7). By providing members with a means to appeal such fines, the Commission believes that the procedures set forth in Amendment No. 1 should help to ensure that fines are imposed fairly under CBOE Rule 17.50(g)(7). Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-CBOE-94-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35314; File No. SR-NASD-94-10]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Procedures for Large and Complex Arbitration Cases**

February 1, 1995.

On January 31, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")<sup>1</sup> 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 rule change amends the Code of Arbitration Procedure ("Code")<sup>4</sup> by amending Part III, Sections 43<sup>5</sup> and 44<sup>6</sup> and adding new Section 46 to provide procedures for large and complex arbitration cases as a one year pilot program.

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. 34998, Nov. 22, 1994) and by publication in the **Federal Register** (59 FR 61010, Nov. 29, 1994). Two comment letters were

<sup>1</sup> The NASD initially submitted the proposed rule change on February 15, 1994. Amendment No. 1, submitted on October 12, 1994, clarified various aspects of the proposed rule change, altered the manner in which arbitrators are selected to a panel and altered the disclosures required with respect to unsuccessful settlement discussions. Amendment No. 2, submitted on November 18, 1994, amended proposed Section 46(g) to clarify that arbitrators may, at their own initiative, issue an award accompanied by a statement of reasons or basis of award and that parties may specifically agree to require arbitrators to issue a statement of reasons when they issue an award. Amendment No. 3, submitted on December 12, 1994, and Amendment No. 4 were minor technical amendments. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (December 9, 1994) (available in Commission's Public Reference Room); Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (January 31, 1994) (available in Commission's Public Reference Room).

<sup>2</sup> 15 U.S.C. 78s(b)(1) (1988).

<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, Sec. 43 (CCH) ¶ 3743.

<sup>6</sup> NASD Manual, Code of Arbitration Procedure, Part III, Sec. 44 (CCH) ¶ 3744.

received.<sup>7</sup> This order approves the proposed rule change.

**I. Background**

The Code governs arbitration of any dispute arising out of or in connection with the business of any NASD member, or arising out of the employment or termination of employment of associated persons with a member, other than disputes involving the insurance business of any member which is also an insurance company, if the dispute is: (1) Between or among members; (2) between or among members and associated persons; (3) between or among members of associated persons and public customers, or others; or (4) between or among members, registered clearing agencies with which the NASD has entered into an agreement to use the NASD's arbitration facilities and procedures, and participants, pledges or other persons using the facilities of a registered clearing agency.<sup>8</sup>

The Code contains specialized procedures for certain categories of cases. Part II of the Code<sup>9</sup> contains procedures applicable solely to industry and clearing controversies. Section 13 of the Code<sup>10</sup> contains certain specialized procedures applicable to controversies involving public customers and associated persons or members if these controversies involve a dollar amount not exceeding \$10,000.

The NASD submitted this rule change because it believes that certain large and complex cases may require special management beyond that currently afforded by the Code. Therefore, the NASD is adding new Section 46 to the Code setting forth procedures for handling and managing large and complex cases. In part, some of the procedures contain certain features of rules adopted by the American Arbitration Association ("AAA") for processing large and complex cases. Section 46 also contains certain features of the arbitration rules of the National Futures Association. Many of the procedures in Section 46 also are provided elsewhere in the Code; however, the NASD believes that grouping these procedures together in a

<sup>7</sup> See letter from Cliff Palefsky, Esq., Chairman, Securities Industry Arbitration Committee, National Employment Lawyers Association ("NELA"), to Jonathan G. Katz, Secretary, SEC, dated December 12, 1994 ("NELA Letter"); letter from Seth E. Lipner, Esq., Deutsch & Lipner, to Jonathan G. Katz, Secretary, SEC, dated December 22, 1994 ("Lipner Letter").

<sup>8</sup> NASD Manual, Code of Arbitration Procedure, Part I, Sec. 1 (CCH) ¶ 3701.

<sup>9</sup> NASD Manual, Code of Arbitration Procedure, Part II, Secs. 8-11 (CCH) ¶ 3708-3711.

<sup>10</sup> NASD Manual, Code of Arbitration Procedure, Part III, Sec. 13 (CCH) ¶ 3713.

<sup>12</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>13</sup> 17 CFR 200.30-3(a)(12) (1994).