Subject: Rule Change Notice – Changes to NASD Arbitration Rules

Pursuant to ISE Rule 1800, which in part states that the NASD’s Code of Arbitration shall govern ISE arbitrations, this Regulatory Information Circular informs Members of a rule change to the NASD Code of Arbitration published by the Securities and Exchange Commission, attached.

In the April 19, 2005 Federal Register, the Commission published notice of filing and order granting accelerated approval of a proposed rule change (SR-NASD-2005-045) by NASD to amend rule 3110(f) to extend the time period for delivery of a copy of a customer account agreement containing a predispute arbitration clause from the time of signing to within 30 days of signing. (Securities Exchange Act Release No. 34-51526 (April 12, 2005))

A copy of each notice is attached for reference.
SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Dated: April 11, 2005.
Margaret H. McFarland,
Deputy Secretary.


Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delivery of Customer Agreements Containing Predispute Arbitration Clauses

April 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") 1 and Rule 19b–4 thereunder, 2 notice is hereby given that on April 4, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is approving the proposal on an accelerated basis.

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

NASD is proposing to amend NASD Rule 3110(f) to: (1) Amend NASD Rule 3110(f)(2)(B) to conform to the SEC’s recordkeeping rules, in particular, Exchange Act Rule 17a–3(a)(17)(i)(B)(i); 3 by extending the time period for delivery of a copy of a customer account agreement containing a predispute arbitration clause from the time of signing to within 30 days of signing; (2) extend the compliance date of the recent amendments to NASD Rule

3 17 CFR 240.17a–2(a)(17)(i)(B)(i). This rule requires a broker-dealer, among other things, to keep a record indicating that the broker-dealer has furnished to each customer within 30 days of opening the account a copy of the account record, or alternate document, containing the customer’s name, address, telephone number, date of birth, employment status, annual income, net worth, the account’s investment objectives, and other information.
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 III below. 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. Purpose

(a) Delivery of Customer Agreements

The purpose of the proposed rule change regarding the delivery of customer agreements is to conform the time period for the delivery of copies of any customer agreement containing a predispute arbitration clause to customers in NASD Rule 3110(f) with the SEC recordkeeping rules, in particular, Exchange Act Rule 17a-3(a)(17)(i)(B)(i). On November 22, 2004, the Commission approved changes (the "Rule 3110 changes") to NASD Rule 3110(f), which governs the use of predispute arbitration agreements with customers. The primary purposes of the Rule 3110 changes were to require enhanced disclosure to customers about the arbitration process and to clarify the prohibition against inserting provisions in predispute arbitration agreements that limit rights or remedies that parties have (for example, the ability of a party to file any claim in arbitration). The Rule 3110 changes also require that firms provide a copy of any customer agreement containing a predispute arbitration clause to the customer, who must acknowledge receipt thereof on the agreement or on a separate document, at the time of signing. The proposed rule change would amend the time requirement for delivery of a copy of the customer agreement from the time of signing to within 30 days of signing.

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 included statements concerning

3 Prior to the Rule 3110 changes, firms were required to provide copies of predispute arbitration agreements to customers; however, the rule did not specify when they must do so.

4 The changes made to NASD Rule 3110(f)(3)(A) by the Rule 3110 changes require firms to provide customers who request a copy of any predispute arbitration clause or client agreement with a copy within ten business days of the request. Thus, if the rule changes proposed by this notice are adopted, customers wishing to have a copy of the customer agreement sooner than the specified 30 days can request one. For example, if a customer requests a copy of the agreement on the date of signing, the firm must provide the copy to the customer within ten business days of receiving that request.

5 Firms were permitted to use customer agreements containing the new disclosure language required by the Rule 3110 changes before June 1, 2005.
Comments may be submitted by any of the following methods:

Electronic Comments
- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-045 on the subject line.

Paper Comments
- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549—0609.

All submissions should refer to File Number SR-NASD-2005-045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2005-045 and should be submitted on or before May 10, 2005.

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of section 15A(b)(6) of the Act and the rules and regulations thereunder. Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed in part to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change requiring members to provide customers with executed customer agreements in a time period consistent with the Commission’s recordkeeping rules, in particular, Exchange Act Rule 17a-3(b)(17)(ii)(B)(1), fosters cooperation and coordination with persons engaged in regulating transactions in securities. The Commission finds that the proposed rule change balances the need for protecting investors with the need for minimizing the administrative burden on members and is consistent with the requirements of the Act. The Commission notes that NASD Rule 3110(f)(3)(A) protects investors by requiring members to provide customers with a copy of the executed customer agreement within 30 days of execution, whether or not the customer requests a copy. If a customer requests a copy before the end of the 30-day period, the member must provide such copy within ten business days or before the end of the 30-day period, whichever date is earlier. The Commission notes that under the proposed rule change, members also are required to provide customers with additional copies of the executed agreement within ten business days if a customer requests it.

The Commission believes that the proposed rule change would not affect the compliance date for NASD Rule 3110(f)(1) from May 1, 2005, to June 1, 2005, as designed to foster cooperation and coordination with persons engaged in regulating transactions in securities and is consistent with the Act. The Commission notes that the compliance date for NASD Rule 3110(f)(2) through (f)(7) remains May 1, 2005.

NASD has requested that the Commission find good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission believes that granting accelerated approval for the proposed rule change will permit NASD to provide its members with notice of the revised customer agreement delivery requirement and staggered compliance dates in timely manner. The Commission therefore finds good cause for approving the proposed rule change prior to the 30th day after the date of
publication of notice of filing thereof in that accelerated approval will benefit NASD members and the investing public.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2005–045) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.11

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. E5–1818 Filed 4–18–05; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt a New Rule (NYSE Rule 401A) Requiring Members and Member Organizations To Respond to Customer Complaints, and Adding Failure To Acknowledge Customer Complaints to the Minor Fine Provisions of NYSE Rule 476A

April 13, 2005.

I. Introduction

On October 21, 2004, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,2 a proposed rule change to adopt a new rule, denoted NYSE Rule 401A, to require its members and member organizations ("members") to respond to customer complaints, and to add failure to acknowledge customer complaints to the minor fine provisions of NYSE Rule 476A. The proposed rule change was published for comment in the Federal Register on March 7, 2005.3 The Commission received no comments in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

NYSE Rule 351(d) requires NYSE members to "report to the Exchange statistical information regarding customer complaints relating to such matters as may be specified by the Exchange." Pursuant to this Rule, the NYSE currently requires reporting of statistical information relating to complaints by customers involving, inter alia, sales practices, unauthorized trading and misappropriation of funds.4 The reporting obligation applies to "[a]ll complaints, regardless of how delivered (oral, written, e-mail or fax) * * * ."5

The NYSE now proposes to adopt a new Rule, designated 401A, to require its members to acknowledge and respond to customer complaints. Specifically, Rule 401A(a) would require NYSE members to acknowledge receipt of every customer complaint that is subject to the reporting requirements of Rule 351(d) within 15 business days of receipt, and to respond to the issues raised in such complaint within a reasonable period of time. Rule 401A(b) would mandate specific methods of delivery for acknowledgements and responses. Written acknowledgements and responses mailed to the complaining customer’s last known address would suffice in all cases. However, where a complaint was electronically transmitted, members would be permitted to acknowledge and respond to it by electronic transmission to the e-mail address from which the complaint was sent. The Exchange would also permit verbal acknowledgements and responses to verbal complaints, provided that they are recorded in a log of such actions. Paragraph (c) of the proposed rule would require members to keep written records of all such acknowledgements, responses, and logs in accordance with NYSE Rule 440 ("Books and Records").

Finally, the Exchange proposes to add failures to acknowledge customer complaints within 15 days of receipt to the list of violations in NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"). Rule 476A provides that the Exchange may impose fines, not to exceed $5,000, on any member for a minor violation of the Exchange rules specified therein.

III. Discussion and Findings

The Commission finds the proposed rule change is consistent with the Act, and in particular with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange 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.6 The Commission further finds that the proposal is consistent with section 6(b)(6) of the Act,7 which requires that members be appropriately disciplined for violations of Exchange rules. Finally, the Commission finds the proposal is consistent with Rule 19d–1(c)(2) under the Act,8 which governs minor rule violation plans.

As the Exchange stated in its proposal, no current NYSE rule requires members to acknowledge or respond to complaints from customers.9 The proposal will require NYSE members to acknowledge and respond to any and all customer complaints that must be reported to the Exchange under NYSE Rule 351(d). Indeed, under proposed Rule 401A, ignoring or neglecting a customer complaint would constitute a violation of NYSE rules. The Commission believes that the new Rule is consistent with the protection of investors and the public interest because, by requiring members to review and respond to customer complaints, and by requiring records to be kept with respect to such actions, the Rule should encourage NYSE members to attend to complaints that may alert them to potential abuses and to take corrective action, where appropriate.

The Commission also believes that the new required procedures should foster an awareness within NYSE member firms of the volume and specific types of complaints they receive, thereby promoting appropriate preventive or supervisory action by the member’s compliance personnel. Specifically, requiring firms to review and respond to customer complaints should enhance a member’s ability to supervise its personnel by drawing attention to any that may require additional training or monitoring. Exposure to an aggregation of complaints should also alert NYSE members to systemic problems with registered representatives, products, and services and should allow the member to identify areas where it, or its personnel, could improve compliance. Further, the Commission believes that the proposed new Rule should serve to protect investors because it will require NYSE members to notify them when

22 NYSE Information Memo Number 03–38 (Sep. 19, 2003).
26 Notice of 11041.