unaffiliated Liquidity Provider that participates in the loan facility; and

(h) the interest rate that may be paid to CNAI as Liquidity Provider is expected to be no higher than that available for secured lines of credit from typical financial sources for similar transactions considered by the Fund as consistent with its objectives and policies and in the best interests of shareholders.

6. If a Conduit determines (i) to require CNAI as Liquidity Provider to acquire from the Conduit outstanding loans made to a Fund, or (ii) not to extend additional loans to a Fund but require CNAI as the Liquidity Provider to do so, the Board, including a majority of the Disinterested Directors, will be notified promptly. As soon as practicable, the Board, including a majority of the Disinterested Directors, must determine whether it is in the best interests of a Fund and its shareholders to continue to participate in the loan facility or to terminate its participation in the loan facility in accordance with its terms and, if applicable, refinance the loans with proceeds from alternative sources. In determining that it is in the best interests of a Fund and its shareholders to participate in the loan facility, the Board shall find that the interest rate paid to CNAI as Liquidity Provider (i) is no higher than that available for secured lines of credit from typical financial sources for similar transactions that are considered by the Fund as consistent with it objectives and policies and in the best interests of shareholders and (ii) does not exceed the interest rate on comparable loans made by CNAI to closed-end funds unaffiliated with Citigroup in similar transactions.

7. In making the determinations referred to in conditions 5(c), 5(h) and 6 above, the Board will consider interest rate quotes from at least three loan facilities or other alternative financing sources unaffiliated with Citigroup.

8. At each regular quarterly meeting, the Board, including a majority of the Disinterested Directors, will (a) review a Fund's loan transactions with the loan facility during the preceding quarter, including the terms of each transaction; and (b) determine whether the transactions were effected in compliance with the Procedures and the terms and conditions of this order. At least annually, the Board, including a majority of the Disinterested Directors, will (a) make the determinations concerning a Fund's continued participation in the loan facility required in condition 4 above; and (b) approve such changes to the procedures as it deems necessary or appropriate.

9. The Funds will maintain and preserve permanently in an easily accessible place a written copy of the Procedures and any modifications to the Procedures. The Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction with the loan facility occurred, the first two years in an easily accessible place, (a) a written record of each transaction setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, and (b) all information upon which the determinations required by these conditions were made.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31637 Filed 12–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42185; File No. SR–NASD–99–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Creating a Voluntary Single Arbitrator Pilot Program

November 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On November 26, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice of the rule change, as amended, to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 24, 1999. In Amendment No. 1, NASD Regulation made changes to clarify certain aspects of the proposal (''Amendment No. 1'').

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

NASD Regulation proposes to amend the Code of Arbitration Procedure of the NASD to implement a voluntary single arbitrator pilot program. Below is the text of the proposed rule change. Proposed Rule 10337 contains all new language.

* * * * *

Rules of the Association

1000. Code of Arbitration Procedure

* * * * *

10337. Single Arbitrator Pilot Program

This Rule allows parties with claims of $50,000.01 to $200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. This Pilot Program is voluntary, and includes provisions that allow the parties to communicate directly with the arbitrators under certain conditions. The Pilot Program should result in lower arbitration fees and quicker resolution of arbitration claims for participants.

(a) Claims Eligible for Single Arbitrator Pilot Program

(1) Claims arising between a customer and an associated person or a member for amounts from $50,000.01 to $200,000, including damages, interest, costs, and attorneys' fees, will be eligible to be heard by a single arbitrator pursuant to this Rule (''Pilot Program''), except as provided in paragraph (a)(2) or (b)(3) below.

(2) Claims that include a request for punitive damages will not be eligible for the Pilot Program unless all parties agree.

(b) Arbitrator Selection Procedure

(1) After parties receive notice that a panel of three arbitrators has been selected for their case, as provided in Rule 10308, the parties may agree to have one of the arbitrators serve as the single arbitrator who will hear their case.

(2) The parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5).

(3) If the parties do not agree to have one of the arbitrators serve as the single arbitrator, then the claim will not be eligible for the Pilot Program and will proceed instead under the usual procedures of Rule 10308.

(c) Communications With Arbitrators

(1) Parties may send written materials, including information requests and motions, directly to the single arbitrator, provided that copies of such materials are sent simultaneously and in the same manner to all parties and to the Director. Parties shall send the Director, arbitrator, and all parties proof of service of such written materials, indicating the time, date, and manner of service upon the artibtrator and all parties. Service by mail is complete upon mailing. If the arbitrator and all parties agree, written materials may be served electronically.

(2) If the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call. At the discretion of the arbitrator, such conference calls may be tape recorded.

(3) The arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins. At the discretion of the arbitrator, such conference calls may be tape recorded.

(4) Parties may not communicate orally with the arbitrator unless all parties are present.

(d) Fees

(1) Filing fees, member surcharges, and process fees for the Pilot Program will be the same as in Rules 10332 and 10333.

(2) Hearing session deposits for the Pilot Program are as follows:

(A) Hearing session deposits for claims of $50,000.01 to $100,000 will be $550 per session.

(B) Hearing session deposits for claims of $100,000.01 to $200,000 will be $750 per session.

(C) The forum fee for a telephone pre-hearing conference call with the arbitrator will be $450.

(e) Awards

The single arbitrator may not award the parties more than a total of $200,000, including damages, interest, costs, and attorneys' fees, unless all parties agree that the arbitrator may award a larger amount. In addition, the arbitrator shall allocate forum fees to the parties as provided in Rule 10332(c).

(f) Applicability of Code

Except as provided in this Rule, the remaining provisions of the Code will apply to the Pilot Program.

(g) Temporary Effectiveness

This Rule shall remain in effect until [two years after effective date].

* * * * *

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 Regulation 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. NASD Regulation 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

NASD Regulation proposes to implement a two-year voluntary pilot arbitration program in which parties may choose to use a single arbitrator for cases involving claims of $50,000.01 to $200,000, which would otherwise require three arbitrators.

Background

In developing a proposal to provide parties in a public customer case with the alternative of a single arbitrator at a reduced cost, NASD Regulation sought feedback from the Public Investors Arbitration Bar Association, the Securities Industry Association and the NASD's Small Firm Advisory Board to determine if investors and the industry would support such a program. After evaluating the feedback provided, NASD Regulation decided to offer, on a trial basis, an optional modification of current Neutral List Selection System (''NLSS'') procedures. NLSS is a computerized program developed to generate lists of arbitrators (''neutrals'') for selection by the parties. The program is the foundation for the NASD's recently adopted list selection rule, Rule 10308, which was approved by the SEC effective November 17, 1998.[4]

Description of Proposed Amendments

The proposed rule change adds a new Rule, proposed to be numbered as Rule 10337, entitled Single Arbitrator Pilot Program (''Pilot Program''), which will be effective for a two-year period. The introductory language explains in simple terms that the rule will allow parties with claims of $50,000.01 to $200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. The introductory language also indicates that the program is voluntary and that it will allow the parties to communicate directly with the arbitrators under certain conditions. Finally, the introductory language states that the program should result in lower arbitration fees and quicker resolution of arbitration claims for participants.

Amount in Controversy/Punitive Damages

Proposed paragraph (a)(1) describes the types of claims that are eligible for the Program. It sates that claims arising between a customer and an associated person or a member are eligible for the Program. The Program will not be available for the resolution of employment disputes or other intra-industry disputes. The Pilot Program will be limited to claims seeking between $50,000.01 and $200,000. The minimum number was chosen because a single arbitrator is already generally prescribed by Rule 10308(b)(1)(A) for claims of up to $500,000. Interest, attorneys' fees, and other costs will be included within the Pilot's $200,000 claim limitation. All types of claims by all parties, including any counterclaims, third-party claims, and cross-claims, would be counted in the $200,000 limitation, although NASD Regulation anticipates that most cases handled by the Pilot Program will be relatively straight forward. The arbitrator will allocate forum fees to the parties, as already provided in the Code, in addition to the amount of the award. This means that forum fees will not be counted in the $200,000 limitation.

Paragraph (a)(2) provides that the Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator.

Arbitrator Selection Process

In the normal arbitrator selection process, parties are given lists of possible arbitrators as provided in Rule 10308. Parties then may strike one or more of the arbitrators and rank any remaining arbitrators. Using NLSS, NASD Regulation then consolidates the parties' lists and prepares a list of three arbitrators who have been selected for the case.[5] After parties receive notice

[4] *See* Exchange Act Release No. 40555 (Oct. 14, 1998), 62 FR 56670 (Oct. 22, 1998) (File No. SR–NASD–98–48); Exchange Act Release No. 40556 (Oct. 14, 1998), 63 FR 56957 (Oct. 23, 1998) (File No. SR–NASD–98–64).

[5] If the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, NASD Regulation staff will select one or more arbitrators to complete the panel. Rule 10308(c)(4)(B). Information about such arbitrators

Continued

that a panel of three arbitrators has been selected, rule 10308(b)(5) provides that they have 15 days in which to select a chairperson. At this point, NASD Regulation proposes that its staff will inform the parties of the terms of the voluntary Pilot Program if their case appears to fit the criteria for the Pilot Program.[6] As provided in proposed paragraph (b)(1), parties then can determine whether they want to choose one of their three selected arbitrators to serve as the single arbitrator in the Pilot Program.

This method was chosen because, based on user feedback, it appeared that parties would not be willing to use the Pilot Program unless they knew in advance who the single arbitrator would be. Under the proposed rule change, the parties will have background information on the potential panel members and will be able to make an informed decision as to whether to proceed with a single arbitrator. Because the parties may choose any one of the three arbitrators, it is possible that the single arbitrator will not be a public arbitrator. That person will, however, be a person agreed to by all parties.

Paragraph (b)(2) provides that parties will have 15 days from the date the director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5). It is expected that the arbitrator who would have been chosen as the chairperson is most likely the same person who will be chosen as the single arbitrator. Thus, if the parties decide not to proceed in the Pilot Program, they can proceed under normal procedures without delay.

If the parties do not agree on a single arbitrator, paragraph (b)(3) provides that the case will proceed under normal NLSS procedures with three arbitrators.

Communication With Arbitrators

Unlike the procedures normally used, the Pilot Program will allow parties to communicate directly without NASD Regulation staff involvement. To expedite case resolution, proposed paragraph (c)(1) provides that the parties will be permitted to send written materials, including information (discovery) requests and motions, directly to the selected arbitrator. Copies of such materials must be sent simultaneously and in the same manner to all parties[7] and to the Director. Parties also must send the Director, arbitrator, and all parties proof of service of such written materials, indicating the time, date, and manner of service upon the arbitrator and all parties. No particular format is prescribed; parties may use the same type of Certificate of Service used in state or federal courts or another format that includes the necessary information (including the address to which the materials were sent). As is true under the Federal Rules of Civil Procedure,[8] service by mail is complete upon mailing.

For purposes of the proposed rule, ''mailing'' might include depositing the materials in a facility of the United States Postal Service or sending them by means of a messenger or overnight delivery service. If the arbitrator and all parties agree, written materials may be served by facsimile (fax) or other electronic means. Such agreement might be given at the point of entry into the Pilot Program or at any time thereafter by providing an electronic mail (E-mail) address or a facsimile number. Once such agreement is given, it will be presumed to continue unless the arbitrator and parties are notified otherwise. If the arbitrator or any party does not have access to an electronic means of communication, then such means may not be used.

Proposed paragraph (c)(2) provides that, if the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call.[9] Similarly, paragraph (c)(3) provides that the arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins.

At the discretion of the arbitrator, conference calls may be tape recorded. The current practice for taping pre-hearing conference calls will be followed for taping conference calls under the Pilot Program. That practice is that the person wishing to tape record the call notifies NASD Regulations staff in advance, and arrangements are made either to (i) use tape recording equipment operated by the arbitrator or an NASD Regulation staff member, or (ii) have the conference operator tape record the call. The cost of tape recording the conference call may be allocated to one or more parties by the arbitrator at the conclusion of the case, as provided in Rule 10332(c). Alternatively, the arbitrator may direct one of the parties to prepare a written summary of the decisions reached during the call, and send the summary by facsimile to the arbitrator and all parties within a short period of time (normally 24 hours) while memories are still fresh.

Paragraph (c)(4) states that parties may not communicate orally with the arbitrator unless all parties are present.

Paragraph (c) thus provides for flexibility and yet ensures that there are no improper *ex parte* contacts between the arbitrator and the parties.

Filing Fees, Member surcharges, and Hearing Session Deposits

Filing fees, member surcharges, and member processing fees will not change under the Pilot Program. Rather, proposed paragraph (d)(1) provides that such fees will be the same as in Rules 10332 and 10333. However, hearing session fees will be reduced in the Pilot Program to reflect lower arbitrator honoraria (payments) and other costs. The fee for a pre-hearing conference call with an arbitrator will be the same as at present, $450. Specifically:

- Paragraph (d)(2)(A) provides that, for claims of $50,000.01 to $100,000.00, hearing session fees under the Pilot Program will be $550 per session or $1,100 per typical two session day. The new fee structure represents a reduction of $200 per session for the parties as compared with normal case procedures (or a $400 reduction per typical two session day).
- Paragraph (d)(2)(B) provides that, for claims of $100,000.01 to $200,000.00, hearing session fees under the Pilot Program will be $750 per session or $1,500 per typical two session day. The new fee structure represents a reduction of $375 per session for the parties as compared with normal case procedures (or a $750 reduction per typical two session day).
- Paragraph (d)(2)(C) provides that the fee for a pre-hearing conference call with the arbitrator will be $450. This fee does not vary with the amount of the claim.

NASD Regulation can afford to pass on to parties the above savings in hearing session fees because the use of a single arbitrator rather than three arbitrators will result in savings in the

will be sent to the parties, who may object as provided in rule 10308(d)(1).

[6] parties may have received information about the Pilot Program earlier in the process, and if so, they will be reminded that this option is available. If approved, the proposal provides for a delay in the effective date of the pilot so that parties can become familiar with the program.

[7] Since parties may be represented by counsel at any stage of an NASD arbitration proceeding (*see* Rule 10316), service upon a party's counsel of record will be considered to be service on the party.

[8] *See* Fed. R. Civ. P. 5(b).

[9] Under paragraph (d)(2)(C), fees for pre-hearing telephone conference calls will be capped at $450 as they are in Rule 10332(k). To the extent that such calls resolve issues relating to timing, motions, witnesses, or discovery, they ultimately may save the parties time and expense by expediting the hearing process.

honoraria paid to arbitrators.[10] Some costs are fixed, however, regardless of the size of the panel. since a tentative panel of three arbitrators will be selected before parties decide on a single arbitrator, the cost of the arbitrator selection process will remain the same as if a three-arbitrator panel were to be used. Such costs include: production of a list of up to 15 possible arbitrators (referred to herein as ''potential arbitrators'') from which the parties may select the initial panel of three arbitrators, preparation and mailing of additional information concerning potential arbitrators (if requested), gathering and mailing of the five most recent awards rendered by each of the potential arbitrators, staff review of potential arbitrators for conflicts of interest specific to the pending case, Central Registration Depository (CRD) background checks on any potential arbitrators who have worked in the securities industry, consolidation and ranking of potential arbitrators, contacting the potential arbitrators to determine their availability, and, if a single arbitrator is chosen under the Pilot Program, notifying two of the final three arbitrators that they will not be needed.

In addition, many fixed costs of holding hearings will also be the same, regardless of whether the panel consists of three arbitrators or one. These costs include hearing room usage costs (which may include rental fees for commercial facilities or reimbursement to the NASD for use of NASD office space), and staff time and travel expenses (if staff attend the hearing). For these reasons, NASD Regulation believes the proposed fees for the single arbitrator program are fair and reasonable.

Limitations on the Amount of the Award

Proposed paragraph (e) provides that the single arbitrator may not award the parties more than a total of $200,000, including damages, interest, costs, and attorneys' fees, unless all parties agree that the arbitrator may award a larger amount. In addition, the arbitrator will allocate forum fees to the parties as provided in rule 10332(c). Therefore, parties will want to evaluate their claims carefully to ensure that they fit within the parameters of the Pilot Program.

In the unlikely event that, during the course of the arbitration, a claimant learns of information that leads the claimant to believe there are additional claims, or higher claims than originally made, which would raise the total amount in controversy over the $200,000 maximum, the claimant has the option of (i) asking the arbitrator to dismiss the case without prejudice under rule 10305 and, if that request is granted, re-filing the revised claim as a regular, three-arbitrator case.[11] or (ii) asking the other parties to stipulate that the single arbitrator may award more than $200,000. NASD Regulation does not anticipate that such issues will arise with any frequency.

To assist parties in understanding the proposed rule change, NADS Regulation staff is preparing informational material that will be given to parties, most likely when the claim is served and again when the list of appointed arbitrators is mailed, so that parties can make an informed decision as to whether their case is appropriate for the Pilot Program. In addition, training material regarding the Pilot Program will be given to arbitrators who are selected to serve as single arbitrators under the Pilot Program.

Applicability of Code

Proposed paragraph (f) of the Rule provides that, except as provided in this rule, the remaining provisions of the Code will apply to the Pilot Program. This means that the normal arbitration rules and procedures will apply unless they are specifically superseded in the proposed rule.

Duration of Pilot Program

Paragraph (g) provides that the proposed rule will remain in effect until two years after the effective date. Prior to the expiration of the Pilot Program, NASD Regulation may decide to extend the Program, and would then request SEC approval for an extension. NASD Regulation staff will develop an evaluation form to solicit feedback from Pilot participants. This feedback will be used to consider whether to continue or terminate the Pilot, or whether additional refinements to the Pilot are necessary.

Benefits to Customers and the Securities Industry

Under the Pilot Program, the parties have full control over the single arbitrator selection process. They may agree to select either a public arbitrator or an industry arbitrator to preside as the single arbitrator. In addition, the parties' hearing session costs will be reduced. Scheduling of pre-hearing conferences and hearing dates will be easier with a single arbitrator. Parties may file discovery requests and motions directly with the assigned arbitrator, which will eliminate delay. Parties also will be permitted to contact the arbitrators for conference calls at the convenience of the parties and arbitrator without the involvement of NASD Regulation staff.

Effective Date

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[12] of the Act, which requires, among other things, that the Association's rules must 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. NASD Regulation believes that the proposed rule change will protect investors and the public interest by providing a streamlined and less expensive voluntary alternative for arbitration claims that meet the Pilot Program criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90

[10] For each hearing session, NASD Regulation will save $400 in arbitrator honoraria. Conversation between Linda Fienberg, Executive Vice President, NASD Regulation, and Joseph P. Corcoran, Attorney, Division, Commission on November 29, 1999.

[11] rule 10305(a) provides that arbitrators may dismiss a proceeding at the request of a party or on the arbitrators' own initiative. Therefore, the single arbitrator has the discretion to determine whether or not to grant a request for dismissal. Rule 10305(c) provides that arbitrators shall dismiss a proceeding at the joint request of all the parties.

[12] 15 U.S.C. 78o–3(b)(6).

days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–54 and should be submitted by December 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31639 Filed 12–6–99; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42191; File No. SR–NASD–99–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Application of Certain NASD Rules to Limited Offerings Under SEC Rule 504, Securities Exempted Under the Securities Exchange Act of 1934, and Intra-State-Only Offerings

December 1, 1999.

I. Introduction

On January 13, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain NASD rules to clarify how they apply to offerings of securities made in reliance on the limited offering exemption from registration set forth in Rule 504 of Regulation D,[3] and to make other changes. NASD Regulation amended the proposed rule change on May 24, 1999.[4]

The Commission published notice of the proposed rule change in the **Federal Register** on June 18, 1999.[5] The Commission received no comments. NASD Regulation filed a second amendment on November 1, 1999.[6] For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description of the Proposal

NASD Regulation proposes to change NASD rules in three principal ways. Most significantly, NASD Regulations proposes to modify several NASD rules to clarify when they apply to offerings of securities made in reliance on the exemption from registration for limited offerings that is set forth in Rule 504 of Regulation D.

NASD Regulation also proposes to modify the Corporate Financing Rule, Rule 2710, to clarify that it applies to all offerings subject to the intra-state exemption set forth in Section 3(a)(11) of the Securities Act of 1933 (''Securities Act'').[7]

NASD Regulation proposes to modify the Conflicts of Interest Rule, Rule 2720, to clarify that it does not apply to securities exempted under Section 3(a)(12) of the Act.[8]

Beyond those changes, NASD Regulation also proposes to modify these rules to make them consistent in form and easier to read.

A. Application of Rule 504 Offerings to NASD Rules

Earlier this year, the Commission modified Rule 504 of Regulation D, which exempts certain limited-size offerings of securities from Securities Act registration requirements.[9] As amended, all Rule 504 offerings are subject to Rule 502(c) limitations on the manner of offering[10] and to Rule 502(d) limitations on resale,[11] unless the Rule 504 offering satisfies certain state law registration requirements or state law exemptions.[12] Rule 504 contained

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 230.504.

[4] *See* Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, to Joshua Kans, Attorney, Division of Market Regulation (''Division''), Commission, dated May 21, 1999 (''Amendment No. 1''). Amendment No. 1 modified the proposed rule change in response to the Commission's amendment of Securities Act Rule 504. *See* Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999) (adopting amendment to Rule 504 under Regulation D, 17 CFR 230.504).

NASD staff and Commission staff clarified the purpose of this proposed rule change, the scope of the rule impacted by this proposed rule change, and the NASD's response to an amendment to Rule 504 of Regulation D during telephone conversations between Suzanne Rothwell, NASD Regulation, and Joshua Kans, Commission, on February 1, February 8, May 12, and June 10 and July 30, 1999.

[5] Securities Exchange Act Release No. 41519 (June 11, 1999), 64 FR 32907 (June 18, 1999).

[6] *See* letter from Suzanne Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated October 22, 1999 (''Amendment No. 2''). Amendment No. 2 corrected a typographical error which cited a word in NASD Rule IM–2110–1(l)(1) as ''to,'' rather than ''into.'' The amendment did not affect the substance of the proposed rule change.

[7] U.S.C. 77c(a)(11).

[8] 15 U.S.C. 78c(a)(12).

[9] *See* Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999).

[10] 17 CFR 230.502(c). Rule 502(c) prevents Regulation D offerings from being offered by any form of general solicitation or general advertising.

[11] 17 CFR 230.502(d). Rule 502(d) prevents securities acquired in Regulation D offerings from being resold without being registered under the Securities Act or being exempted from registration.

[12] A Rule 504 offering is not subject to Rule 502(c) limitations on the manner of offering or Rule 502(d) limitations on resale only when the offering is made: (i) exclusively in one or more states that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive dislocure document before sale, and are made in accordance with those state provisions; (ii) in one or more states that have no provision for the registration of the securities or the