

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act⁶ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change establishes or changes a member due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-CHX-2007-11 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2007-11. 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. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. 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 File Number SR-CHX-2007-11 and should be submitted on or before May 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55617; File No. SR-NASD-2007-022]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical Amendments to the Code of Mediation Procedure

April 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on March 16, 2007, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") 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 NASD Dispute Resolution. NASD has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD Dispute Resolution is proposing to amend the Code of Mediation Procedure to re-number Rules 10401 through 10410 and update cross references within the re-numbered rules. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, and at the Commission's Public Reference Room.

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 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 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

In 1998, the SEC launched an initiative to encourage issuers and self-regulatory organizations to use "plain English" in disclosure documents and other materials used by investors. In response, NASD undertook to rewrite the NASD Code of Arbitration Procedure ("old Code") in "plain

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 10, 2007, the date on which the CHX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

English.” This undertaking became the Code Revision Project (“Project”).

NASD began to implement the Project in 2003 when it filed with the SEC a proposed rule change to the old Code to reorganize the rules, simplify the language, codify current practices, and implement several substantive changes.⁵ The proposal reorganized NASD’s old dispute resolution rules (Rules 10000 *et seq.*) into three separate procedural codes: the NASD Code of Arbitration Procedure for Customer Disputes (“Customer Code”); the NASD Code of Arbitration Procedure for Industry Disputes (“Industry Code”); and the NASD Code of Mediation Procedure (“Mediation Code”).⁶ The three new Codes would replace the old Code in its entirety.

On October 31, 2005, the SEC approved the Mediation Code.⁷ It became effective on January 30, 2006.⁸ On January 24, 2007, the SEC approved the Customer Code and Industry Code.⁹ The Customer and Industry Codes will become effective on April 16, 2007.¹⁰

Because the Mediation Code became effective before the Customer and Industry Codes were approved, NASD implemented the Mediation Code by replacing the old rules governing mediation (Rules 10400 *et seq.*) in the

old Code with the rules of the Mediation Code. To minimize confusion and to assist the users of the dispute resolution forum, NASD re-numbered the rules of the Mediation Code so that they would be consistent with the numbering in the old Code, which was still in effect at the time the Mediation Code became effective. In replacing the old rules with those of the Mediation Code, NASD changed cross-references to proposed rules of the Customer and Industry Codes to applicable rules of the old Code, and removed rule language that was based on the proposed codes.

Under this proposed rule change, NASD is proposing to remove Rules 10401 through 10410 of the Mediation Code from the old Code and re-number them so that the Mediation Code becomes a separate procedural code, as proposed and approved by the SEC.¹¹ NASD also is proposing to change cross-references to applicable rules of the Customer and Industry Codes, and re-insert definitions of “NASD Customer Code” and “NASD Industry Code” in Rules 14100(g) and Rules 14100(h) respectively, which had been reserved until the new Codes were approved.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that NASD’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 believes that the proposed rule change is consistent with the provision of the Act noted above because it will provide useful guidance to parties, mediators and staff, and will help standardize the administration of NASD mediations.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

NASD 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.

¹¹ See *Id.* at nn. 7 & 9. The Customer Code will use the Rule 12000 series, the Industry Code will use the Rule 13000 series, and the Mediation Code will use the Rule 14000 series, all of which are currently unused under the NASD numbering system. *Id.*

¹² 15 U.S.C. 78o-3(b)(6).

(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 by NASD.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(3) thereunder because it is concerned solely with the administration of the self-regulatory organization.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-2007-022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-022. 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

⁵ See Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (File No. SR-NASD-2003-158) (Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Customer Disputes).

⁶ In 2004, NASD filed separately with the SEC the Industry and Mediation Codes. See Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (File No. SR-NASD-2004-011) (Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Industry Disputes); and Exchange Act Release No. 51855 (June 15, 2005), 70 FR 36440 (June 23, 2005) (File No. SR-NASD-2004-013) (Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto to Amend NASD Arbitration Rules for Mediation Proceedings).

⁷ See Exchange Act Release No. 52705 (Oct. 31, 2005), 70 FR 67525 (Nov. 7, 2005) (File No. SR-NASD-2004-013) (Order Granting Approval to Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, to Amend NASD Rules for Mediation Proceedings).

⁸ The changes were announced in Notice to Members 05-85 (Dec. 2005).

⁹ See Exchange Act Release No. 55158 (Jan. 24, 2007), 72 FR 4574 (Jan. 31, 2007) (File Nos. SR-NASD-2003-158 and SR-NASD-2004-011) (Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto; Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Industry Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto).

¹⁰ The changes were announced in Notice to Members 07-07 (Feb. 2007).

¹³ 17 CFR 240.19b-4(f)(3).

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 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-2007-022 and should be submitted on or before May 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55615; File No. SR-NYSE-2007-34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend NYSE Rule 80A.40(b) To Update the Definition of "Program Trading," To Substitute Simplified Audit Trail Requirements, and To Make Conforming Amendments to NYSE Rule 410B

April 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 22, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NYSE proposes to amend NYSE Rule 80A.40(b) to update the definition of "program trading" by eliminating the pre-determined minimum dollar value requirement for trading strategies that

involve the related purchase or sale of a "basket" or group of 15 or more stocks, to substitute simplified audit trail requirements, and to make conforming amendments to Rule 410B. The text of the proposed rule change is available at NYSE, <http://www.nyse.com>, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

In order to improve the reporting and monitoring of program trading by the Exchange, NYSE proposes to clarify what constitutes program trading and to streamline the process for entering and identifying program trades. To accomplish this, the Exchange is proposes (i) to amend NYSE Rule 80A.40 to eliminate the minimum dollar value from the definition of program trading, and (ii) to substitute simplified audit trail requirements in place of the more cumbersome reporting requirements that currently apply to program trading. The proposed amendments also include certain conforming amendments to NYSE Rule 410B. In connection with these changes, the Exchange also intends to issue guidance regarding the definition of a "coordinated strategy," as that term is used in Rule 80A.40.

Background. The Exchange adopted Rule 80A in the wake of the 1987 market break to address various coordinated professional trading strategies, in particular, program trading that was using the cash market to take advantage of trading in the derivatives market. To ensure that the rule would encompass the various permutations that such trading strategies might take, the Exchange defined program trading as either index arbitrage or "any trading strategy involving the related purchase or sale of a 'basket' or group of 15 or more stocks having a total market value of \$1 million or more." The monetary value was believed at the time to

capture program trading strategies that would be significant in the context of the market. Despite a significant increase in the size and value of trading in the market since 1987, however, this monetary component of the definition has not been updated since it was adopted.

Proposed Redefinition of Program Trading. Given the technical and automated nature of the trading environment that exists today, the Exchange believes that the current definition of "program trading" is no longer workable, since, among other things, it captures certain computer-driven or algorithmic trading strategies that are not intended to be program trades. At the same time, certain strategies that could fairly be classified as programs—that is, strategies involving 15 or more stocks that are intended to be coordinated, but which do not meet the monetary threshold—are not being captured.

In contrast to 1987, most firms today employ algorithmic trading to manage and carry out both plain-vanilla execution strategies that are not intended to be programs, including public-customer driven parameter-based trading (that is, trading in which the customer specifies certain desired execution conditions such as timing, pricing, quantity, or marketplace selection, and the algorithm evaluates market information and generates orders that best match the specified conditions without further human intervention), and more complex trading strategies that are intended to be programs. The Exchange therefore recognizes that not all computer-driven trading strategies constitute Program Trading. For example, if they otherwise lack the other definitional characteristics of program trading, algorithmic trading, volume-weighted average price ("VWAP") trading, statistical arbitrage, and similar computer-driven trading strategies may not need to be classified or reported as a program simply because the strategy is executed through a computer model or "black box."

This has led to regulatory confusion; indeed, member firms have informed the Exchange that in order to ensure full compliance with the rule, they feel compelled to report computer-driven trading strategies that meet the technical definition of a program even though they are not, in fact, intended as program trading.

To address the issue of the overbroad definition of program trading and to improve the precision of program trade reporting, the Exchange proposes to amend the definition of program trading under NYSE Rule 80A.40 to eliminate

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.