

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44897; File No. SR-NASD-2001-62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Code of Arbitration Procedure Rule 10333 Relating to Member Surcharges and Hearing and Prehearing Process Fees

October 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. notice is hereby given that on September 28, 2001, 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. 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 proposes to amend Rule 10333 of the NASD Code of Arbitration Procedure ("Code") to raise member surcharges and hearing and prehearing process fees paid by members. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

10000. Code of Arbitration Procedure

* * * * *

10333. Member Surcharge and Process Fees.

(a) Member Surcharge

(1) Each member that is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-Claim or Third-Party Claim, shall be assessed a nonrefundable surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on an party to the proceeding.

(2) For each associated person who is named, the surcharge shall be assessed against the member or members that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding.

(3) The surcharge shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code.

Member Surcharge Schedule

Amount in Dispute	Surcharge
\$0.01-\$2,500	\$150
\$2,500.01-\$5,000	\$200
\$5,001.01-\$10,000	[\$300] \$325
\$10,000.01-\$25,000	[\$400] \$425
\$25,000.01-\$30,000	\$600
\$30,000.01-\$50,000	[\$800] \$875
\$50,000.01-\$100,000	[\$1,000] \$1,100
\$100,000.01-\$500,000	[\$1,500] \$1,700
\$500,000.01-\$1,000,000	[\$2,000] \$2,250
\$1,000,000.01-\$5,000,000	[\$2,500] \$2,800
\$5,000,000.01-\$10,000,000	[\$3,000] 3,350
Over 10,000,000	[\$3,600] \$3,750

[(b)(4) Unchanged.

[(c)(5) If the dispute, claim, or controversy does not involve, disclose, or specify money a claim, the non-refundable surcharge shall be [\$1,200] \$1,500 or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule.

[(d)(b) Prehearing and Hearing Process Fees

(1) Each member that is a party to an arbitration proceeding *in which more than \$25,000 is in dispute* will pay:

(A) [a non-refundable process fee as set forth in the schedule below for each stage of the proceeding] *a non-refundable prehearing process fee of \$750, due at the time the parties are sent arbitrator lists in accordance with Rule 10308(b)(5); and*

(B) each member that is a party to an arbitration proceeding will pay a non-refundable hearing process fee, due when the parties are notified of the date and location of the first hearing session, as set forth in the schedule below.

(2) [The process fee shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code.] If an associated person of a member is a party, the member that employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the process fees[.], *even if the member is not a party. No member shall be assessed more than one prehearing*

and one hearing process fee in any arbitration proceeding.

(3) *The prehearing and hearing process fees shall not be chargeable to any other party under Rules 10332(c) and 10205(c) of the Code.*

[The prehearing process fee will accrue according to the schedule set forth below, but will not become due until (1) the parties are notified of the prehearing conference, or (2) if no prehearing conference is scheduled, the parties are notified of the date and location of the first hearing session. The hearing fee will accrue and be due and payable when the parties are notified of the date and location of the first hearing session. All accrued but unpaid fees will be due and payable at the conclusion of the member's or associated person's involvement in the proceeding. No member will pay more than one prehearing and hearing process fee for any case. The process fees will stop accruing when either the member enters into a settlement of the dispute or the member is dismissed from the proceeding or, if the member is paying a process fee as a result of an associated person being named as a party, when the associated person enters into a settlement or is dismissed from the proceeding, whichever is later.]

[Prehearing Process Fee Schedule

(proceedings where more than \$25,000 is in dispute)

Service of Claim (accrues when the claim has been submitted and is ready to be served on the respondents)	\$50
Case Preparation (accrues when the first answer to the claim is received or due and discovery or motions proceedings commence ...)	\$150
Prehearing Activities (accrues when the parties are first notified of the names of any arbitrators selected to hear the matter or are given the names of arbitrators to select)	\$400
Total	\$600]

Hearing Process Fee Schedule

[(accrues and becomes due and payable when the parties are notified of the date and location of the first hearing session)]

Damages Requested	Hearing Process Fee
\$1-\$25,000	\$0
\$25,000.01-\$50,000	\$1,000
\$50,000.01-\$100,000	[\$1,500] \$1,700
\$100,000.01-\$500,000	[\$2,500] \$2,750
\$500,000.01-\$1,000,000	[\$3,500] \$4,000
\$1,000,000.01-\$5,000,000	[\$4,500] \$5,000
More than \$5,000,000	[\$5,000] \$5,500
Unspecified	[\$2,000] \$2,200

* * * * *

¹ 15 U.S.C. 78s(b)(1).² 17 CFR 240.19b-4.

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 Dispute Resolution included statements concerning the purpose of and the 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 Dispute Resolution 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

The proposed amendments to Rule 10333 of the NASD Code would raise member surcharges and hearing process fees, which are paid by members only, by an aggregate of ten percent. The proposed rule change would also combine the various current portions of the prehearing process fee paid by members in cases in which more than \$25,000 is in dispute into one fee of \$750, representing an increase of \$150, payable at the time arbitrator lists are sent to parties pursuant to Rule 10308(b)(5) of the Code. The primary purposes of the proposed fee increase are to fund NASD Dispute Resolution's share of the cost of developing and implementing a new computer system, MATRICS, which will greatly enhance the administration of cases in the forum, and to give NASD Dispute Resolution additional funds to pay for inflationary cost increases. The proposed rule change would also amend and reorganize Rule 10333 to reflect the consolidation of the prehearing process fee payments, and to make the rule easier to use.

Member Surcharge Increase

Rule 10333 currently requires that each member that is a party to an arbitration proceeding, or that employed an associated person who is a party to an arbitration proceeding at the time of events that gave rise to the dispute, pay a non-refundable member surcharge. The amount of the surcharge varies depending on the amount in dispute, ranging from \$150 for cases involving claims of \$2,500 or less, to \$3,600 for claims involving more than \$10,000,000.

Under the proposed rule change, member surcharges, which were last

raised in 1997, would be raised by an aggregate of ten percent. Actual increases in each case would range from zero to 25.7 percent, depending on the amount in dispute. The highest actual per-case increase would be \$350. Based on anticipated caseloads, this would generate additional annual revenue of approximately \$1,000,000 per year.

Prehearing Process Fees

Currently, Rule 10333 provides that, in cases in which the amount in controversy exceeds \$25,000, each member that is a party, or members that employed an associated person named as a party at the time of the events that gave rise to the arbitration proceeding, must pay a prehearing process fee. The prehearing process fee is currently divided into three segments, which accrue as follows: \$50 at the time of the service of claim; \$150 when the first answer to the claim is received or due and discovery and motions proceedings begin; and \$400 when the parties are first notified of the names of any of the arbitrators selected to hear the matter, or are given the names of arbitrators to select.

Under the proposed rule change, these three prehearing process fees would be combined into a single fee of \$750, an increase of \$150, due at the time the parties receive the arbitrator lists. This would generate a projected \$850,000 in additional revenue per year.

Hearing Process Fee Increase

Rule 10333 also requires that each member that is a party to an arbitration, or that employed an associated person who is a party to an arbitration proceeding at the time of the events that gave rise to the dispute, pay a hearing process fee, which accrues when the parties are notified of the date and location of the first hearing session. The amount of the hearing process fee ranges between \$0 and \$5,000 depending on the amount of damages requested.

The proposed rule change would result in a ten percent aggregate increase in the hearing process fee paid by members. Actual increases in each case would range from zero to 14 percent, depending on the amount in dispute. The highest per-case increase would be \$500. Based on anticipated caseloads, this would generate additional annual revenue of approximately \$1,000,000 per year.

Other Changes to Rule 10333

The proposed rule change would also reorganize Rule 10333 to make it simpler to use, and to conform the text throughout the rule to the proposed

consolidation of the prehearing process fee payments. The rule would be broken into two sections: Members Surcharges and Prehearing and Hearing Process Fees. Other than the reorganization of the text, and the increase in the surcharge amounts, the substance of the rule regarding payment of surcharges would not be changed in any material respect. Other than the reorganization of the text and the increase in the amount of fees, the substance of the rule regarding prehearing and hearing process fees would be modified to reflect the consolidation of the prehearing process fee payments. In addition, language in Rule 10333(d) explaining that all accrued but unpaid member fees are due at the conclusion of the member's or associated person's involvement in the case, even in the case of settlement, would be deleted. NASD Dispute Resolution has determined that the language is no longer necessary in light of a recently approved amendment to Rule 10306 of the Code, which clarifies that in the event of a settlement, parties remain responsible for all fees incurred under the Code.³

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁴ of the Act, which requires, among other things, that the 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 Dispute Resolution believes that the proposed rule changes will protect investors and the general public by ensuring that NASD Dispute Resolution remains adequately funded and able to meet its commitment to provide fair, expeditious, and cost-effective dispute resolution services for investors, brokerage firms, and their employees.

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

NASD Dispute Resolution 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.

³ Exchange Act Release No. 44573 (April 20, 2001) (File No. SR-NASD-2001-21), 66 FR 21423 (April 30, 2001).

⁴ 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.

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)⁵ of the Act and Rule 19b-4(f)(2) thereunder⁶ as establishing or changing a due, fee, or other charge paid solely by members of the NASD. 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.⁷

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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-2001-62 and should be submitted by October 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-25386 Filed 10-9-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-44888; File No. SR-NYSE-2001-38)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading Ordinary Shares of Deutsche Bank on the Exchange

September 28, 2001.

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 September 27, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The NYSE proposes to adopt interpretations of certain rules of the Exchange's Listed Company Manual ("Manual") to accommodate the trading of ordinary shares of Deutsche Bank Aktiengesellschaft ("Deutsche Bank").³ These interpretations pertain to Deutsche Bank's proxy procedures and form of shares.

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

In its filing with the Commission, the Exchange 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 III below. The Exchange 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 Exchange facilitated the trading of the ordinary shares of DaimlerChrysler AG ("DaimlerChrysler") by adopting interpretations of certain existing rules of the Manual.⁴ The Commission approved those interpretations.⁵ In 2000, the Exchange facilitated the trading of the ordinary shares of Celanese AG ("Celanese") by adopting interpretations that were substantially similar to those made in connection with the trading of the ordinary shares of DaimlerChrysler. The Commission also approved those interpretations.⁶

The Exchange's experience indicates that since their original listing on the Exchange, the ordinary shares of each of DaimlerChrysler and Celanese have traded on the Exchange without difficulty. The Exchange now proposes to adopt similar interpretations to accommodate the listing and trading on the Exchange of Deutsche Bank's ordinary shares. Because of the developments in German law and business practices, as well as evolution of the Exchange's rules, the Exchange proposes to adopt an additional interpretation relating to form of shares of Deutsche Bank that would allow the Ordinary Shares to be in a book-entry only format, provided that the securities

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ These interpretations are generally similar to those approved by the Commission in respect of trading of ordinary shares of DaimlerChrysler AG and Celanese AG, each a stock corporation incorporated under laws of the Federal Republic of Germany. See Securities Exchange Act Release No. 40597, 63 FR 58435 (October 30, 1998); Securities Exchange Act Release No. 43044, 65 FR 45808 (July 25, 2000).

⁴ Specifically, the Exchange accepted a form of stock certificate that complied with requirements of the Frankfurt Stock Exchange ("FSE") notwithstanding its variation from some of the requirements in Paras. 501 and 502 of the Manual. The Exchange also interpreted Paras. 401.03 and Para. 402 of the Manual to permit DaimlerChrysler to solicit proxies in a manner that combined characteristics of both German and U.S. markets.

⁵ See Securities Exchange Act Release No. 40597, 63 FR 58435 (October 30, 1998).

⁶ See Securities Exchange Act Release No. 43044, 65 FR 45808 (July 25, 2000).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).