SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Existing collection in use without an OMB Number:
Rule 8c–1, SEC File No. 270–455, OMB Control No. 3235—new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of the following rule: Rule 8c–1.

Rule 8c–1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 8c–1, respondents must collect information necessary to prevent the rehypothecation of customer securities in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecathion of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protection.

There are approximately 258 respondents per year (*i.e.*, broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 5,805 hours to comply with the rule. Each of these approximately 258 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 11,610 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 5,805 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondents of $116,100 (5,805 hours @ $20 per hour).

The retention period for the recordkeeping requirement under Rule 8c–1 is three years. The recordkeeping requirement under this Rule is mandatory to ensure that broker-dealer's do not commingle their securities or use them to finance the broker-dealers proprietary business. This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 16, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25229 Filed 9–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40441; File No. SR–NASD–98–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to NASD Code of Arbitration Procedure Rule 10335 (Injunctive Relief Rule)

September 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') 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 by NASD Regulation.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD Regulation is proposing to amend Rule 10335 of the NASD's Code of Arbitration Procedure (''Code'') to clarify and improve the rule and to make it a permanent part of the Code. Below is the text of the proposed rule change. The proposed language (which is italicized) would replace the existing rule (which is in brackets) in its entirety.

* * * * *

RULES OF THE ASSOCIATION

10000. CODE OF ARBITRATION PROCEDURE

10300. UNIFORM CODE OF ARBITRATION

10335. [Injunctions

In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties to the arbitration may seek injunctive relief either within the arbitration process or from a court of competent jurisdiction. Within the arbitration process, parties may seek either an ''interim jurisdiction'' from a single arbitrator or a permanent injunction from a full arbitration panel. From a court of competent jurisdiction, parties may seek a temporary injunction. A party seeking temporary injunctive relief from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file a claim for permanent relief with respect to the same dispute with the Director in the manner specified under this Code. This Rule contains procedures for obtaining an interim injunction. Paragraph (g) of this Rule relates to the effect of court-imposed injunctions on arbitration proceedings. If any injunction is sought as part of the final award, such request should be made in the remedies portion of the Statement of Claim, pursuant to Rule 10314(a).

(a) Single Arbitrator

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

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed two amendments to the proposed rule change. *See* Letters from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 9, 1998 (''Amendment No. 1'') and September 10, 1998 (''Amendment No. 2''). These amendments made several clarifications which are incorporated into this Notice.

Applications for interim injunctive relief shall be heard by a single arbitrator.

(b) Showing Required

In order to obtain an interim injunction, the party seeking the injunction must make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor.

(c) Application for Relief

Interim injunctions include both Immediate Injunctive Orders and Regular Injunctive Orders, as described in paragraph (d) below. In either case, the applicant shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly-executed Submission Agreement on the party or parties against whom injunctive relief is sought. The above documents shall simultaneously and in the same manner be filed with the Director of Arbitration, together with an extra copy of each document for the arbitrator, proof of service on all parties, and all fees required under Rule 10205. Filings and service required under this Rule may be made by United States mail, overnight delivery service or messenger.

(d) The procedures and timetable for handling applications for interim injunctive relief are as follows:

(1) Immediate Injunctive Orders.

(A) Upon receipt of an application for an Immediate Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than one and no later than three business days after receipt of the application by the respondent and the Director.

(B) The filing of a response to an application for an Immediate Injunctive Order is optional to the party against whom the immediate order is sought. Any response shall be served on the applicant. If a response is submitted, the responding party shall, prior to the hearing or at the hearing, file with the Director two copies of the response and proof of service on all parties.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Rule 10310; and any information required to be disclosed by the arbitrator pursuant to Rule 10312 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for an Immediate Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Immediate Injunctive Order. Unless the parties agree otherwise, however, the order will expire no later than the earlier of the issuance or denial of a Regular Injunctive Order under subparagraph (2) or a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(2) Regular Injunctive Orders.

(A) Upon receipt of an application for a Regular Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than three and no later than five business days after the response is filed or due to be filed, whichever comes first.

(B) The party against which a Regular Injunctive Order is sought shall serve a response on the applicant within three business days of receipt of the application. The responding party shall simultaneously and in the same manner file with the Director two copies of the response and proof of service on all parties. Failure to file a response within the specified time period shall not be grounds for delaying the hearing, nor shall it bar the respondent from presenting evidence at the hearing.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Rule 10310; and any information required to be disclosed by the arbitrator pursuant to Rule 10312 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for a Regular Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Regular Injunctive Order. Unless the parties agree otherwise, however, a Regular Injunctive Order shall expire no later than a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(e) Challenges to Arbitrators

There shall be unlimited challenges for cause to the single arbitrator appointed to hear the application for injunctive relief, but there shall be no peremptory challenges. Parties wishing to object to the arbitrator shall do so by telephone to the Director, and shall confirm such objection immediately in writing or by facsimile transmission, with a copy to all parties. A peremptory challenge may not be made to an arbitrator who heard an application for an injunctive order and who subsequently participates or is to participate on the arbitration panel hearing the same arbitration case on the merits.

(f) Hearing on the Merits

Immediately following the issuance of an Immediate or Regular Injunctive Order, the Director shall appoint arbitrators according to the procedures specified in the Code to hear the matter on the merits. The arbitration shall proceed in an expedited manner pursuant to a schedule and procedures specified by the arbitrators. The arbitrators may specify procedures and time limitations for actions by the parties different from those specified in the Code.

(g) Effect of Court Injunction

If a court has issued an injunction against one of the parties to an arbitration agreement, unless otherwise specified by the court, any requested arbitration concerning the matter of the injunction shall proceed in an expedited manner according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

(h) Security

The arbitrator issuing the Immediate or Regular Injunctive Order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper, in a separate bank trust or escrow account for the benefit of the party against whom injunctive relief is sought, for the payment of any costs and damages that may be incurred or suffered by the party against whom injunctive relief is sought if it is found to have been wrongfully enjoined.

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on July 3, 1998, unless extended by the Association's Board of Governors.]

Temporary Restraining Orders

In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties to the arbitration may seek a temporary restraining order within the arbitration process or from a court of competent

jurisdiction. This Rule contains procedures for obtaining this interim relief in arbitration or in court pending completion of an arbitration proceeding. Requests for permanent injunctive relief should be made in the remedies portion of the Statement of Claim, pursuant to Rule 10314(a).

(A) Temporary Restraining Orders in Arbitration

(1) Single Arbitrator; Consolidation

A single arbitrator shall hear applications for a temporary restraining order. At the arbitrator's discretion, multiple requests for relief involving the same applicant or respondent may be consolidated.

(2) Showing Required

In order to obtain a temporary restraining order, the party seeking the relief (''applicant'') must meet the standards for obtaining a temporary restraining order of the state in which the events leading to the application occurred.

(3) Application for Relief

An applicant seeking a temporary restraining order shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for a temporary restraining order, and a properly executed Submission Agreement on the party or parties against whom the applicant seeks relief. The applicant shall file the above documents simultaneously and in the same manner with all parties and the Director of Arbitration. The papers filed with the Director of Arbitration should also include three extra copies of each document, proof of service on all parties, and all fees required under Rule 10205. Filings and service required under this Rule may be made by United States mail, overnight delivery service or messenger, or facsimile transmission.

(4) Appointment of Arbitrator

Upon receipt of an application for a temporary restraining order, the Director of Arbitration shall appoint an arbitrator to hear the application. Upon appointment, the arbitrator shall set the initial hearing date.

(5) Challenges to Arbitrator

(a) There shall be unlimited challenges for cause, but no peremptory challenges, to the single arbitrator appointed to hear the application for a temporary restraining order. Parties challenging the arbitrator for cause shall do so by telephone to the Director of Arbitration, and shall confirm such objection immediately in writing, with a copy to all parties.

(b) Parties may not make a peremptory challenge to the arbitrator who has heard an application for a temporary restraining order and subsequently will participate on the arbitrator panel hearing the same case on the merits.

(6) Scheduling of Hearing; Notice to Parties

(a) The arbitrator shall endeavor to schedule a hearing no sooner than one and no later than three business days after the response is filed or due to be filed, whichever comes first.

(b) The Director of Arbitration shall provide to all parties notice of the date, time, and place of the hearing, the name and employment history of the single arbitrator required by Rule 10310, and any information required to be disclosed by the arbitrator pursuant to Rule 10312 via telephone, facsimile transmission, or messenger delivery prior to the hearing.

(c) At the discretion of the arbitrator or the Director of Arbitration, the hearing may be held by telephone or in person in a city designated by the Director of Arbitration.

(7) Filing of Responses

(a) The party against which an applicant seeks a temporary restraining order (''responding party'') may respond to the application. A responding party shall serve any response on the applicant and shall file with the Director of Arbitration four copies of the response and proof of service on all parties.

(b) Within time frames set by the arbitrator, the parties shall be permitted to file briefs, affidavits and documentary evidence in connection with the request for a temporary restraining order.

(8) Arbitrator's Decision

The arbitrator shall endeavor to grant or deny the application for a temporary restraining order within one business day after the hearing and record are closed.

(9) Expiration of Temporary Restraining Orders in Arbitration

A temporary restraining order shall expire 10 days from the date of issuance. The arbitrator may extend the temporary restraining order for ten-day periods until a hearing on the merits is held. Notwithstanding the expiration date, a temporary restraining order shall expire upon a decision on the merits of the entire controversy, unless the parties agree otherwise.

(B) Court-Ordered Temporary Restraining Orders

(1) Parties to an arbitration may seek a temporary restraining order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to paragraph (A). However, a party making such a request must do so within five days of when the party knew or should have known or the event or occurrence upon which the request is based. In any event, a party may not seek a temporary restraining order in court after a hearing on the merits in arbitration has convened.

(2) An arbitrator may not issue an order enjoining a party from seeking a temporary restraining order in court. The availability of the temporary restraining order remedy in arbitration is not grounds for a party to seek denial of a temporary restraining order in court. However, a party which has been denied a temporary restraining order in arbitration or in court may not seek the same relief in the other forum.

(3) Parties may not seek discovery in court in connection with a request for a court-ordered temporary restraining order.

(4) A party seeking a temporary restraining order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file a claim for permanent relief with respect to the same dispute with the Director in the manner specified under this Code. A party obtaining a court-ordered temporary restraining order shall notify the Director of Arbitration of the issuance of the order within one business day.

(5) A party obtaining a temporary restraining order in court may not request that the court extend the order's effectiveness beyond an initial ten-day period, unless no arbitrator or panel of arbitrators has been appointed to review the court's order in accordance with paragraph (B)(6) of this Rule.

(6) Review of Court-Ordered Temporary Restraining Order

(a) Upon request by one or more of the parties, the Director of Arbitration shall appoint a three-member panel of arbitrators to review the court-issued temporary restraining order before expiration of the order. If a three-member panel of arbitrators cannot be appointed before the temporary restraining order expires, the Director of Arbitration may appoint a single arbitrator to review the court-issued temporary restraining order.

(b) There shall be unlimited challenges for cause, but no peremptory challenges, to the arbitrator(s) appointed to review a court-ordered temporary restraining order. Parties challenging the arbitrator(s) for cause shall do so by telephone to the Director of Arbitration, and shall confirm such objection immediately in writing, with a copy of all parties.

(c) the panel or single arbitrator appointed to review the court-ordered temporary restraining order may (i)

issue an order extending the court's order, (ii) issue a temporary restraining order with different terms and conditions than the court's order, or (iii) decline to issue a temporary restraining order. A temporary restraining order issued by the reviewing arbitrator(s) may not become effective until the expiration of the court's order. A temporary restraining order issued by the reviewing arbitrator(s) may be extended for ten-day periods until a hearing on the merits is held.

(d) Within time frames set by the arbitrator(s), the parties shall be permitted to file briefs, affidavits and documentary evidence in connection with the review of a court-ordered temporary restraining order.

(7) Showing Required

In order to obtain an extension of a court-ordered temporary restraining order, the party seeking relief must make the same showing specified in paragraph (A)(2) of this Rule.

(C) Hearing on the Merits

(1) Immediately following the issuance of a temporary restraining order in arbitration, or upon notification to the Director of Arbitration of the issuance of a court-ordered temporary restraining order, the Director of Arbitration shall appoint arbitrators to hear the matter on the merits. The Director of Arbitration shall appoint the arbitrators in the manner specified in the Code, provided, however, that the Director of Arbitration shall have the discretion to expiedite the appointment of the arbitrators to facilitate the expedition of the hering on the merits in accordance with paragraph (C)(3) of this Rule.

(2) If the temporary restraining order was issued by an arbitrator, one of the arbitrators appointed to hear the matter on the merits may be the arbitrator who heard the request for the temporary restraining order. If the temporary restraining order was issued by a court and reviewed by a single arbitrator or a panel of arbitrators, one of the arbitrators appointed to hear the matter on the merits may be an arbitrator who reviewed the court-ordered temporary restraining order; by agreement of the parties, the entire panel of arbitrators may be appointed to hear the matter on the merits.

(3) The arbitration shall proceed in an expedited manner pursuant to a schedule and procedures specified by the arbitrators, but in no event shall proceedings commence more than 28 days from the original filing, unless the parties agree otherwise. The arbitrators may specify procedures and time limitations for actions by the parties different from those specified in the Code.

(D) Security

The arbitrator issuing an injunctive relief order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper, in a separate bank trust or escrow account for the benefit of the party against whom the temporary restraining order is sought, for the payment of any costs and damages that may be incurred or suffered by that party.

(E) Effective Date

This rule shall apply to arbitration claims filed on or after January 4, 1999. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule.

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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 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 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

Rule 10335, the NASD's pilot injunctive relief rule, allows interm injunctive relief to be obtained in controversies involving member firms and associated persons in arbitration. The proposed rule change would amend the rule and make it a permanent part of the Code.

The rule took effect on January 3, 1996 for a one-year pilot period. The Commission extended the initial pilot period twice in order to permit NASD Regulation's Office of Dispute Resolution to gain additional experience with the rule before determining whether, and in what form, the rule should be made a permanent addition to the Code. The rule is currently due to expire on January 3, 1999.[4]

a. Summary of the Current Rule. Rule 10335 currently provides, among other things, that: (i) Parties may seek temporary injunctive relief either in court or in arbitration; (ii) Parties who seek temporary injunctive relief in court must simultaneously submit the claim to arbitration for permanent relief; (iii) Parties may obtain interim injunctive relief in arbitration rather than in court in the form of either an Immediate Injunctive Order or a Regular Injunctive Order; (iv) Permanent injunctive relief may be obtained in arbitration as part of the final relief sought by a party in connection with a claim; (v) Applications for interim injunctive relief are expedited; and (vi) Where a court grants interim injunctive relief to one of the parties, arbitration proceedings on the dispute must be expendited.

b. Notice to Members 97–59. The proposed rule change is based in part on responses to Notice to Members (97–59), published in November 1997, and on NASD Regulation's Office of Dispute Resolution staff's experience with the pilot rule. At the time the Notice to Members was published, approximately 433 cases had been filed in which injunctive relief was sought pursuant to the pilot rule. The average number of days between filing and the arbitrator's initial injunctive relief order was approximately 7.5 days. The majority of cases in which injunctive relief was sought involved the transfer of associated persons from one firm to another. In most but not all cases, the associated person's former firm was the petitioner.

The Notice to Members sought comment on how the pilot injunctive relief rule and expedited proceedings work and how they could be improved, and identified more than twenty specific questions based on previous comments received from users of the pilot rule. The comment letters received in response, which are attached to the proposed rule change as Exhibit 3, reflected a wide range of opinions about the rule.[5] While a few commenters advocated eliminating the rule entirely, most expressed support for the availability of injunctive relief in arbitration proceedings. One general concern regarding the functioning of the rule was the length of time needed to obtain injunctive relief under the rule. Most commenters also indicated that the temporary relief available under the rule

[4] The Commission recently approved a related rule filing (File No. SR–NASD–98–42) to extend the pilot rule through January 3, 1999. *See* Securities Exchange Act Release No. 40124 (June 24, 1998), 63 FR 37282 (July 2, 1998).

[5] The comments contained in Exhibit 3 pertain to the pilot injunctive relief rule and not to the proposed rule change.

should be subject to time limits, as are temporary restraining orders and preliminary injunctions available in court. Most also agreed that the current terminology used in the rule, which refers to Immediate and Regular Injunctive Orders, should be changed to be consistent with the terminology used in courts. With some dissenters, most also agreed that arbitrators should have some authority to modify injunctive relief granted by a court, at least once an expedited arbitration hearing on the merits has commenced. The comments reflected less uniformity on issues such as hearing procedures and forum-shopping.

c. The Proposed Amendments. The principal objectives of the proposed amendments are: (1) to simplify and expedite the injunctive relief process in arbitration; (2) to set time limits on injunctive relief issued pursuant to the rule; and (3) to clarify the rules relating to obtaining a court-ordered temporary restraining order, and the effect of such an order on the subsequent arbitration process.

i. *Availability of Injunctive Relief in Arbitration.*

Under the current rule, parties may seek either an Immediate Injunctive Order or a Regular Injunctive Order in arbitration, which are roughly parallel to temporary restraining orders and preliminary injunctions available in court. The rule does not currently impose any time limits on the orders issued, and does not specify what standard should be applied in deciding applications for injunctive relief. Commenters responding to Notice to Members 97–59 complained that the terminology is confusing, that the lack of standards has created uncertainty, and that the lack of time limits permits parties who obtain relief to pressure the enjoined party to settle by delaying the hearing on the merits.

Under the proposed amendments, the Regular Injunctive Order would be abolished, and the Immediate Injunctive Order would be replaced by a temporary restraining order, to track the terminology used in court. Applications for temporary restraining orders would be heard by a single arbitrator, who would be appointed within three days of the filing of an application for relief. The rule would permit unlimited challenges for cause to the arbitrator appointed to hear the request for the temporary restraining order, but would prohibit peremptory challenges.

Temporary restraining orders issued in arbitration would expire after ten days, but could be extended by the single arbitrator for additional ten-day periods until the commencement of a hearing on the merits, which would be required to occur within 28 days of the original filing of the Statement of Claim. A party who sought and was denied a temporary restraining order in court would also be able to request an expedited hearing under the rule.

Under the proposed amendments, the legal standards for obtaining a temporary restraining order in arbitration would be changed to the standards of the law of the state in which the events giving rise to the application occurred. The pilot rule specified a legal standard in part because the kind of injunctive relief available under the rule differed from the kind of injunctive relief available in court. Therefore, reference to state law standards in the pilot rule would not have been practical. The proposed rule change would replace the kinds of injunctive relief available under the pilot rule with temporary restraining orders, which are available in court. Since state law standards for granting temporary restraining orders are well-developed, the rule can now reference state law standards and eliminate its own forum standard.

The proposed rule would make clear that, within the time frames set by the arbitrator, parties could file briefs, affidavits and other evidence in connection with a request for a temporary restraining order.

ii. *Availability of Injunctive Relief in Court*

One of the most controversial issues regarding the pilot rule has been whether or not parties should be able to continue to seek a temporary restraining order in court if the same relief is available in arbitration. Some parties and commenters concerned about the ability to obtain immediate relief have opposed the elimination of the court option. Others have expressed concern that permitting parties to seek relief in court that is also available in arbitration encourages forum-shopping and undermines the arbitration process.

The proposed amendments relating to the availability and effect of a court-ordered temporary restraining order are intended to balance these concerns. The rule would preserve the ability of parties to seek temporary restraining orders in court as an alternative to doing so in arbitration, and would make clear that the availability of a temporary restraining order remedy in arbitration is not grounds for denial of a temporary restraining order request in court. However, parties who sought and were denied a temporary restraining order in one forum would be barred from seeking the same relief in the other forum.

The rule would also clarify that the filing of a claim by one party in arbitration is not a bar to a party seeking a temporary restraining order in court, and that an arbitrator would be prohibited from issuing an order enjoining a party from seeking a court-ordered temporary restraining order. However, when a claim had been filed in arbitration, a party seeking a temporary restraining order in court would have to file in court within five days of when the party knew or should have known of the conduct or event giving rise to the request, and a party would not be able to seek a temporary restraining order in court once a hearing on the merits in arbitration has commenced.

Once a temporary restraining order is issued by a court, the rule would require the Director of Arbitration, if requested by one or more of the parties, to appoint a panel of three arbitrators to review the order within ten days. The rule prohibits a party from requesting extension of the court order beyond the initial ten-day period. If the Director of Arbitration was unable to appoint a panel in that time, the rule would permit the Director to appoint a single arbitrator to review the order. The rule would prohibit a party from asking a court to extend a temporary restraining order unless no panel or arbitrator has been appointed to review the order before the temporary restraining order expires.

Upon expiration of the court's order, the panel or arbitrator appointed to review a court-ordered temporary restraining order could issue or decline to issue a new order. A new order issued by the panel or single arbitrator might be identical to the court's order, or might vary in some or all respects. Such an order would be effective for ten days, and could be extended for additional ten-day periods until a hearing on the merits commenced. Although the panel or arbitrator may issue a new order upon expiration of the court order, arbitrators do not have the authority to extend, vacate or modify a court order.

As in the case of temporary restraining orders sought in arbitration, once a temporary restraining order is issued by a court, a hearing on the merits would be required to be held within 28 days of the original filing of the Statement of Claim. A party who sought and was denied a temporary restraining order in court could still request an expedited hearing under the rule.

(2) Basis

NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules 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. The NASD believes that the proposed rule will serve the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.

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

NASD Regulation did not solicit comments with respect to the proposed rule change. However, the proposed rule change is based in part on written comments received in response to Notice to Members 97–59. A copy of the Notice to Members and copies of the comment letters received in response to the Notice were attached as exhibits to the rule filing.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 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 Association 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 proposal 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. 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–98–49 and should be submitted by October 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25290 Filed 9–21–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S8 for the Office of the Inspector General (OIG) is being amended to reflect the establishment of the Office of External Affairs (S8K). Further notice is given that Chapter S8 is being amended to reflect organizational realignments within the Office of Audit (OA) (S8C) and functional realignments within the Office of Management Services (OMS) (S8G). The changes are as follows:

Section S8.10 *The Office of the Inspector General*—(Organization):

Establish:

H. The Office of External Affairs (S8K).

Section S8.20 *The Office of the Inspector General*—(Functions):

F. The Office of Management Services (S8G). Delete from the last sentence ''public affairs * * * Congressional inquiries.''

Establish:

H. The Office of External Affairs (S8K).

Section S8C.20 *The Office of Audit*—(Functions):

Retitle:

D. ''The Evaluations and Technical Services Division (ETSD) (S8CB) to ''The Management Audits and Technical Services Division (MATSD) (S8CB).''

Amend to read as follows:

The Division performs audits and evaluations of administrative and other non-program functions performed by SSA. It monitors SSA performance in accordance with the Government Performance and Results Act by performing an oversight role as well as performing audits and evaluations of SSA program and administrative functions. The Division also leads the SSA Payment Accuracy Task Force Initiative to improve SSA's benefit payment accuracy. Additionally, the Division provides Headquarters administrative support and technical support to the entire Office of Audit.

Section S8G.00 *The Office of Management Services*—(Mission):

Delete from the last sentence ''public affairs * * * Congressional inquiries.''

Section S8G.20 *The Office of Management Services*—(Functions):

Delete from the last sentence in item 3 ''public affairs * * * Congressional inquiries.''

Add Subchapter:

Subchapter S8K Office of External Affairs

S8K.00 Mission

S8K.10 Organization

S8K.20 Functions

Section S8K.00 *The Office of External Affairs*—(Mission):

The Office of External Affairs (OEA) is responsible for public affairs, interagency activities, OIG reporting requirements and publications and Congressional inquiries. OEA is also responsible for directing reviews and actions to ensure the adequacy of OIG compliance, quality assurance and internal control programs.

Section S8K.10 *The Office of External Affairs*—(Organization):

The Office of External Affairs (S8K), under the leadership of the Assistant Inspector General for External Affairs, includes:

A. The Assistant Inspector General for External Affairs (S8K).

B. The Immediate Office of the Assistant Inspector General for External Affairs (S8K).

Section S8K.20 *The Office of External Affairs*—(Functions):

A. The Assistant Inspector General for External Affairs (S8K) is directly responsible to the Inspector General for carrying out the Office of External