or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11] 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.

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 No. SR–CHX–2006–39 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–2006–39. 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–2006–39 and should be submitted on or before February 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–907 Filed 1–22–07; 8:45 am]

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[10] 15 U.S.C. 78f(b)(4).

[11] 17 CFR 200.30–3(a)(12).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55108; File No. SR–NASD–2006–101]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Provide for the Payment of a $200 Honorarium Per Case for Each Arbitrator Who Considers Contested Motions for the Issuance of Subpoenas

January 16, 2007.

I. Introduction

On August 23, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend IM–10104 of the NASD Code of Arbitration Procedure (''Code'') to provide for the payment of a $200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. On November 13, 2006, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 8, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description

The purpose of the proposed rule change is to provide for the payment of a $200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. NASD previously amended IM–10104, to provide arbitrators with an honorarium of $200 to decide discovery-related motions without a hearing session.[5] The revised rule, however, does not address whether a contested motion concerning a subpoena constitutes a discovery-related motion. As a result, NASD has received questions regarding the appropriate payment, if any, for arbitrators who decide subpoena issues. These questions have focused on whether, under the rule, arbitrators should be paid to decide contested motions requesting the issuance of a subpoena.

The issue of whether arbitrators should receive an honorarium for deciding contested subpoena motions has become even more significant with the Commission's recent approval of amendments to NASD Rule 10322 which, among other changes, permit only arbitrators to issue subpoenas in NASD arbitrations.[6]

In proposing the current rule change, NASD recognized that arbitrators may spend a considerable amount of time and effort deciding contested subpoena motions[7] and stated it believes that arbitrators should be compensated for this work. NASD anticipated that if its proposed changes to Rule 10322 were approved, under most circumstances, the chairperson would be the only arbitrator considering subpoena requests based on the documents supplied by the parties. If the entire panel decided a contested motion, each arbitrator who participates in the subpoena ruling would receive an honorarium of $200. The $200 honorarium paid to an arbitrator would provide payment for all contested subpoena motions in a case (*i.e.*, the honorarium would be paid on a per case basis, regardless of the number of contested subpoena motions considered by an arbitrator or panel during the case).[8] Furthermore, the

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD clarified provisions of the proposed rule change.

[4] *See* Exchange Act Release No. 54857 (Dec. 1, 2006), 71 FR 71213 (Dec. 8, 2006).

[5] *See* Exchange Act Release No. 51931 (June 28, 2005) (File No. SR–NASD–2005–052), 70 FR 38989 (July 6, 2005).

[6] *See* Exchange Act Release No. 55038 (Jan. 3, 2007) (File No. SR–NASD–2005–079). Previously, Rule 10322 allowed arbitrators and any counsel of record to the proceedings to issue subpoenas as provided by law.

[7] For purposes of this rule, a contested motion is defined as a motion to issue a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position. Arbitrators will not be entitled to receive the honorarium if a motion for a subpoena is uncontested.

[8] This differs from other discovery-related motions, for which an arbitrator receives an honorarium for each motion considered. *See* IM–

maximum amount that would be paid by the parties, collectively, for any one case would be $600, irrespective of any changes to the composition of the panel.[9] NASD believes that structuring the honorarium in this manner will limit the arbitration costs for parties while at the same time compensating arbitrators for the time that they spend considering contested subpoena requests.

III. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)[10] and 15A(b)(6)[11] of the Exchange Act, which require, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls, and that NASD'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 Commission believes that the proposed rule change is consistent with the provisions of the Exchange Act noted above because the rule change provides that the panel will have the ability to allocate the honorarium for deciding a discovery-related motion equitably among the parties.[12] Moreover, the Commission believes the proposed rule change will encourage arbitrators to decide contested subpoena requests without scheduling a prehearing conference, thereby expediting the arbitration process for parties.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act[13] that the proposed rule change (SR–NASD–2006–101), as amended, be, and hereby is, approved.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–864 Filed 1–22–07; 8:45 am]

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10104(e). If the panel has received the honorarium for considering a contested subpoena request and subsequently receives a number of new contested subpoena requests, however, the chairperson may call a prehearing conference to hear and decide these matters, for which the participating arbitrator(s) would receive the normal prehearing honorarium. *See* IM–10104(a) and (b).

[9] In situations where more than three different arbitrators consider contested subpoena requests, NASD will pay the additional honorarium. For example, if all three members of a panel have decided a contested subpoena request and the chairperson is thereafter replaced by another arbitrator, NASD would pay the $200 honorarium to the replacement chairperson for deciding any later contested subpoena requests, because the parties already would have incurred $600 in costs relating to the requests. Likewise, if there have been three different chairpersons in the same proceeding, each of whom has considered a contested subpoena request, NASD would pay the $200 honorarium should a fourth chairperson consider a contested subpoena request. NASD does not anticipate that either of these situations will occur frequently.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

[12] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55095; File No. SR–NSCC–2006–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Amend Its Rules and Procedures With Respect to Clearing Fund Collateral

January 12, 2007.

I. Introduction

On October 3, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 25, 2006, amended[1] proposed rule change SR–NSCC–2006–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on December 6, 2006.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description

NSCC is modifying its rules regarding Clearing Fund collateral requirements in order to improve liquidity and minimize risk for NSCC and its members. NSCC is also making certain technical corrections to the text of Rule 4 to conform the rule to actual practice.[4]

Under NSCC's Rules,[5] members are required to make deposits to the Clearing Fund. The amount of each member's required deposit (''Required Deposit'') is fixed by NSCC in accordance with one or more formulas. Presently, a member's Required Deposit may be satisfied with a cash deposit, and a portion of a member's Required Deposit may be evidenced by an open account indebtedness secured by Qualifying Bonds and/or one or more irrevocable letters of credit issued under certain guidelines established within NSCC's Rules.[6] Currently, NSCC haircuts the value that Qualifying Bonds receive when used to meet a member's Clearing Fund requirement and will not allow a letter of credit to be used if by doing so more than twenty percent of NSCC's total Clearing Fund would consist of letters of credit issued by that approved letter of credit issuing bank. Each member is entitled to any Clearing Fund interest earned or paid on Qualifying Bonds and cash deposits.

NSCC is modifying its rules to: (1) Expand the types of instruments which NSCC may accept as Qualifying Bonds (''Eligible Clearing Fund Securities'') securing a member's open account Clearing Fund indebtedness and establish concentration requirements with regard to their use; (2) create a correlating range of haircuts to be applied to these expanded types of Eligible Clearing Fund Securities; and (3) eliminate letters of credit as a generally acceptable form of collateral securing the member's open account Clearing Fund indebtedness.

A. Revised Clearing Fund Components

(1) Cash

The current Clearing Fund minimum cash deposit requirement will remain unchanged: Each member must contribute a minimum of $10,000 with the first forty percent but no less than $10,000 of a member's Required Deposit being in cash.[7]

(2) Securities

NSCC is replacing the term Qualifying Bonds[8] with a new set of definitions for

[1] The amendment was not substantive.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 54822 (November 28, 2006), 71 FR 70820.

[4] For example, the reference in Rule 4, Section 1 to the ''market value'' of Qualifying Bonds has been corrected to accurately reference the ''collateral value'' of Eligible Clearing Fund Securities.

[5] Rule 4 (Clearing Fund), Procedure XV (Clearing Fund Formula and Other Matters), and Appendix 1 (Version 2 of Procedure XV—Limited Applicability).

[6] Mutual Fund/Insurance Service Members are not permitted to use Qualifying Bonds or irrevocable letters of credit to satisfy their Required Deposits.

[7] *See supra* note 6.

[8] ''Qualifying Bonds'' is currently defined in Rule 4 as unmatured bonds that are either direct obligations of or obligations guaranteed as to principal and interest by the United States or its agencies.