

securities registered under Section 12 or 15(d) of the Exchange Act where transfer of such security to or from securities intermediaries is restricted or prohibited. The term "securities intermediary" would be defined in the rule as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. For purposes of the proposed rule, the term "equity securities" excludes securities issued by partnerships, as defined in § 229.901(b) of Regulation S-K, as well as any other equity security the Commission may exempt.

For further information, please contact Jerry Carpenter or Susan Petersen, at (202) 942-4187.

4. The Commission will hear oral argument on appeals by Clarke T. Blizzard and the Division of Enforcement from the decision of an administrative law judge. Blizzard was formerly a senior vice president and managing director of Shawmut Investment Advisers, Inc. ("Shawmut"). Rudolph Abel, formerly Shawmut's president and chief investment officer, opposes the Division's petition for review.

The law judge found that Blizzard willfully aided and abetted and caused violations of Section 206(1) and 206(2) of the Investment Advisers Act of 1940 by Shawmut. The law judge found that charges that Abel aided and abetted violations of those provisions were unproven because no primary violations by Shawmut were established during the period that Abel was employed at Shawmut. The law judge ordered Blizzard to cease and desist from committing or causing any violations or future violations of Section 206 of the Advisers Act; to disgorge commissions in the amount of \$548,233, plus pre-judgment interest; to pay a civil money penalty of \$100,000; and to be suspended for 90 days from association with an investment adviser.

Among the issues likely to be argued are:

1. Whether Shawmut committed the alleged primary violation on which aiding and abetting liability by Blizzard and Abel may be premised.
2. Whether Blizzard and Abel committed the alleged aiding-and-abetting violations.
3. If respondents committed violations, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, May 26, 2004, will be:

Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, May 27, 2004, will be:

Formal order of investigation;  
Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings of an enforcement nature; and an adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: May 18, 2004.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 04-11655 Filed 5-19-04; 12:18 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49716; File No. SR-NASD-2003-164]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Adjournment of an Arbitration Hearing Within Three Business Days of the First Scheduled Hearing Session

May 17, 2004.

On November 4, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, a proposal to amend the rules relating to the adjournment of a scheduled arbitration hearing. On March 5, 2004, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On April 1, 2004, NASD filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Notice of the proposed rule change, as amended, was published for comment

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter dated March 5, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

<sup>4</sup> See letter dated April 1, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

in the **Federal Register** on April 14, 2004.<sup>5</sup> No comments were received on the proposed rule change. This order approves the proposed rule change.

The proposed rule change will amend NASD IM-10104, Rule 10306, and Rule 10319 of the Code to impose a fee of \$100 per arbitrator on parties and to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session.

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>6</sup> Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, 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 the proposed rule change will provide NASD Dispute Resolution with an effective means of addressing the problems associated with last minute adjournments. The rule change should discourage frivolous adjournment requests while promoting more efficient use of the arbitration process by encouraging parties, when appropriate, to settle their disputes earlier to avoid additional fees. In addition, the Commission believes the proposed rule change should help NASD Dispute Resolution maintain a deep pool of qualified arbitrators by assuring arbitrators of some compensation in the event a scheduled hearing is adjourned at the last minute. In sum, the Commission believes that, by providing a more efficient and effective forum for investors to address grievances involving NASD members, the proposed rule change will serve to protect investors and the public interest.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2003-164) be, and it hereby is, approved.

<sup>5</sup> See Securities Exchange Act Release No. 49545 (April 8, 2004), 69 FR 19887 (April 14, 2004).

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04-11519 Filed 5-20-04; 8:45 am]

BILLING CODE 8010-01-P

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #P033]**

**State of Arkansas**

As a result of the President's major disaster declaration for Public Assistance on May 7, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Baxter, Boone, Carroll, Franklin, Jackson, Johnson, Madison, Marion, Newton, Searcy, Stone, Washington, and Woodruff Counties in the State of Arkansas constitute a disaster area due to damages caused by severe storms, flooding and landslides occurring on April 19, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 6, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Ft. Worth, TX 76155-2243.

The interest rates are:

	Percent
<i>For Physical Damage:</i>	
NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE .....	2.750
NON-PROFIT ORGANIZATIONS WITH CREDIT AVAILABLE ELSEWHERE .....	4.875

The number assigned to this disaster for physical damage is P03311.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: May 17, 2004.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04-11578 Filed 5-20-04; 8:45 am]

BILLING CODE 8025-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**Petition for Modification of Single Car Air Brake Test Procedures**

In accordance with Part 232 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for modification of the single car air brake test procedures as prescribed in § 232.305(a). The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's argument in favor of relief.

**The Association of American Railroads**

[Docket Number FRA-2004-17566]

Pursuant to 49 CFR 232.307, the Association of American Railroads (AAR) seeks modification of the single car air brake test procedures, S-486, as prescribed in § 232.305(a) of the Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, AAR intends to remove all references to the flowrator method of testing brake cylinder leakage, and only permit the use of the gauge. The Sections, Paragraphs and Parts of S-486 that AAR request to be modified are as follows:

Original—3.1.2.6 Check the control valve pipe bracket, associated brake cylinder piping, and empty/load device for male brake cylinder pressure taps. If so equipped, apply a quick-disconnect coupling with a brake cylinder pressure test gauge.

Modification—3.1.2.6 Apply a brake cylinder pressure test gauge to the brake cylinder pressure tap.

Paragraphs 3.1.2.7 and 3.1.2.8 The contents of these two paragraphs are being eliminated.

Original—3.1.2.7 If the car being tested has certain wheel defects, a brake cylinder pressure tap must be installed. See the Field Manual of the AAR Interchange Rules, Rule 3, Chart A, for these defects. After the tap is installed, apply a cylinder test gauge. **Note:** If the car has the wheel defects shown in the Field Manual of the AAR Interchange Rules, Rule 3, Chart A, and has a pipe plug in the brake cylinder pipe, remove the plug and install an AAR-approved brake cylinder pressure measurement tap. If the car is equipped with an empty/load valve and the pipe plug is located upstream of the empty/load, install the brake cylinder pressure tap downstream of the empty/load valve.

After the tap is installed, apply a cylinder test gauge.

Original—3.1.2.8 The preferred location of the male pressure tap is within a 2-ft radius around the exterior surfaces of the pipe bracket for single-capacity brake systems. For brake systems equipped with empty/load valves, the preferred location is within a 2-ft radius of the exterior surfaces of the empty/load valve, and the pressure tap must be located in the pipe from the empty/load valve(s) to the brake cylinder(s). The pressure tap may be located at the side sill of the car near the control valve or the empty/load valve if so equipped. See the AAR Manual of Standards and Recommended Practices, Standard S-4020, for a more detailed description of recommended pressure tap locations.

Paragraph 3.1.2.9 is being modified and renumbered as 3.1.2.7

Original—3.1.2.9 If the car is equipped with an empty/load device, the device must be set to the loaded position. For side frame sensing devices, place a block (2-in. minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National) or push in a plunger (WABTEC). **Note:** For cars equipped with empty/load devices, all test procedures must be performed in the loaded condition. Cars with empty/load devices that automatically reset to the empty position must be manually reset to the loaded condition for each of the tests defined here.

Modification—3.1.2.7 If the car is equipped with an empty/load device, the device must be set to the loaded position. For side frame sensing devices, place a block (2-in. minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National) or push in a plunger (WABTEC). **Note:** For cars equipped with empty/load devices, all test procedures must be performed in the loaded position. Cars with empty/load devices that automatically reset to the empty position must be manually reset to the loaded position for each of the tests defined here.

Original—3.5.1 With the control valve cut in, move the test device handle to position 1 and charge the system to 90 psi. Close the flowrator by-pass cock to determine if excessive leakage exists. Allow the ball to stabilize at its lowest reading. When the ball stabilizes at a point between the condemning line and the bottom of the tube, note the location of the top of the flowrator ball. Open the flowrator by-pass cock.

Modification—3.5.1 With the control valve cut in, move the test

<sup>9</sup> 17 CFR 200.30-3(a)(12).