

number in the caption above and should be submitted by August 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR-NASD-96-20 be, and hereby is, approved effective immediately, for a period of 120 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-18169 Filed 7-17-96; 8:45 am]

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[Release No. 34-37425; File No. SR-NASD-96-29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and The Nasdaq Stock Market, Inc.

July 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 2, 1996,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change for a period of 120 days.

¹ On July 8, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended the language of proposed new Subsections II.C.4. and III.C.3 of the Delegation Plan to clarify that it is proposed that the NASD Board of Governors have authority to determine to both call for review or not call for review a matter of the subsidiary Board during the 15-day period provided for consideration by the NASD Board.

On July 10, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 requests temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

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

The NASD is proposing to amend its rules to: (1) Add new Rule 0130 to the NASD's rules delegating to the subsidiaries of the NASD, NASD Regulation, Inc. ("NASDR") and The Nasdaq Stock Market, Inc. ("Nasdaq"), the authority to act on behalf of the Association as set forth in a Plan of allocation and Delegation adopted by the NASD Board of Governors and approved by the Commission pursuant to its authority under the Act; and (2) adopt a Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Plan") setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

The proposed rule change submitted herein, with exceptions, was previously filed with the Commission in SR-NASD-96-16 and was simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days.² Release 34-37107 contained the full text of the proposed rule change, with the exception of three amendments thereto. Set forth below are excerpts from the Plan, marked to show the three amendments. Additions to the Plan are in italics; deletions are in brackets.³

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

* * * * *

C. Board of Governors

1. Composition: The NASD Board of Governors ("NASD Board") shall be composed of at least Nine (9) and no more than thirteen (13) Governors, a majority of whom shall be Non-industry (including at least Two (2) Public Governors). The Chief Executive Officer ("CEO") of NASD shall be a Governor. In the event that the NASD Board shall consist of Eleven (11) or more governors, at least Three (3) shall be Public Governors.

2. Election Procedures
a. Commencing with the selection of Governors to take office on April of 1997, Governors (except the CEO of NASD) shall be elected by a majority

² Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (Release 34-37107).

³ The Commission is separately approving SR-NASD-96-20, amending the NASD By-Laws consistent with the Plan, for a period of 120 days. See Securities Exchange Act Release No. 37424 (July 11, 1996).

vote of those members of the NASD casting ballots on a slate of nominees presented to the NASD membership by the National Nominating Committee for election by secret ballot.

b. National Nominating Committee

(1) The National Nominating Committee shall be composed of at least Six (6) and not more than Nine (9) members, equally balanced between Industry and Non-industry Committee Members (including at least Two (2) Public Committee Members). In the event that the Nominating Committee shall consist of Seven (7) or more members at least Three (3) shall be Public Committee Members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-industry Committee Members shall be in the majority. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD. No more than three of the Committee Members and no more than two of the Industry Committee Members shall be current members of the NASD Board or of the Board of Directors of one of the Subsidiaries (collectively the "Association Boards"). Any member of the National Nominating Committee who is a current member of any Association Board shall be in his/her final year of service on any Association Board.

(2) Members of the National Nominating Committee shall be appointed annually by the NASD Board and may be removed for cause by a majority vote of the NASD Board.

(3) The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.

3. Contested Elections.

a. A candidate for the NASD Board who has not been nominated pursuant to Section 2.b(3) above may be [included on the ballot] *nominated by petition, for the term of office specified by the Board for the vacant governorship*, if the candidate presents duly executed petitions to the National Nominating Committee demonstrating that such candidate has the support of Two (2) percent of the members of the NASD.

b. A candidate for the NASD Board [shall] *may be* [certified by the National Nominating Committee and] included on the ballot only if the Committee certifies that the candidate's petitions

are duly executed by the requisite number of members of the NASD and that the candidate meets the qualifications for the position to be filled, as defined in section I.A. above.

* * * * *

II. NASD Regulation, Inc. ("NASDR")

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C. NASDR Board Procedures

1. **Disciplinary Actions**—Any initial disciplinary decision of the Association, including dismissals, may be appealed to the NBCC within 15 calendar days, or called for review by the NBCC within 45 calendar days, as set forth in the Code of Procedure. A decision of the NBCC may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decisions of the NBCC or NASD Board. Any disciplinary decision not appealed or called for review shall become the final action of the Association upon the expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR, or NASD to the SEC.

2. **Statutory Disqualification Decisions**—any decision of the NBCC with respect to statutory disqualification may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or the NASDR Board. Any decision that is not called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

3. **Rule Filings**—Any rule change adopted by the NASDR Board that imposes fees or other charges on persons or entities other than NASD members or that the NASDR Board refers to the NASD Board because in the view of the NASDR Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the NASDR Board

does not refer a rule change to the NASD Board for review, the NASDR Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the NASDR Board's action but which is 15 calendar days or more following the action of the NASDR Board. During the process of developing rule proposals, NASDR staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the NASDR Board.

4. Notwithstanding the requirements set forth in paragraphs 1 through 3 of this Section, the NASD Board may determine it is advisable to call or not call for review any disciplinary action, statutory disqualification decision, or rule change within the 15 calendar day period following the decision of the NBCC or the NASDR Board, as applicable.

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III. Delegation to Nasdaq

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C. Nasdaq Board Procedures

1. **Listing/Delisting Decisions**—Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing and Hearing Review Committee ("Listing Committee") within 15 calendar days, or called for review by any member of the Listing Committee within 45 days, as set forth in the Code of Procedure. A decision of the Listing Committee may be called for review by any member of the Nasdaq Board not later than its meeting next following the Listing Committee's decision. A decision of the Nasdaq Board may be called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's decision but which is 15 calendar days or more following the decision of the Listing Committee or the Nasdaq Board. Any decision not appealed or called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing Committee, Nasdaq Board or NASD to the SEC.

2. **Rule Filings**—Any rule change adopted by the Nasdaq Board that imposes fees or other charges on persons or entities other than NASD members or issuers or that the Nasdaq Board determines to refer to the NASD Board because in the view of the Nasdaq Board it raises significant policy issues shall be reviewed and ratified by the

NASD Board before becoming the final action of the Association. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's action but which is 15 calendar days or more following the action of the Nasdaq Board. During the process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of NASDR staff before presenting any rule proposal to the Nasdaq Board.

3. Notwithstanding the requirements set forth in paragraphs 1 and 2 of this Section, the NASD Board may determine it is advisable to call or not call for review any listing/delisting decision or rule change within the 15 calendar day period following the decision of the Listing Committee or the Nasdaq Board, as applicable.

* * * * *

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 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. The 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.

(a) Purpose of the Proposed Rule Change Description of Plan

The Plan is organized in three principal parts, one for each of the three major entities that will constitute the reorganized NASD: the parent corporation, National Association of Securities Dealers, Inc.; the regulatory subsidiary, NASD Regulation, Inc.; and the stock market operating subsidiary, The Nasdaq Stock Market, Inc.⁴ The

⁴ The Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as, the Securities Dealers Risk Purchasing Group, Inc. and Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NASD not described in the Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of The Nasdaq

Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each entity.

The first part of the Plan describes the parent corporation, National Association of Securities Dealers, Inc. The Plan sets forth the purpose and function of the NASD; the composition of the Board of Governors, including provisions relating to the qualifications for Governors, election procedures, creation of a National Nominating Committee,⁵ term of office, vacancies and removal from office; the function, composition and reporting structure of the Audit Committee and the Office of International Review; the function and composition of the Management Composition Committee; and the Commission's access to and status of officers, directors, employees, books, records and premises of the subsidiaries.

The second part of the Plan describes the regulatory subsidiary, NASD Regulation, Inc. The Plan sets forth the delegation of authority to NASDR by the NASD; the purpose, function and authority of NASDR; the composition of and qualifications for members of the Board of Directors from 1997 forward, including provisions relating to election procedures; the function and composition the National Business Conduct Committee; the Board's procedures for reviewing disciplinary actions, statutory disqualification decisions and proposed rule change recommendations; and the Board's procedures for initiating actions.

The third part of the Plan describes the stock market operating subsidiary, The Nasdaq Stock Market, Inc. The Plan sets forth the delegation of authority to Nasdaq; the purpose and function of Nasdaq; the composition of and qualifications for members of the Board of Directors, including, provisions relating to election procedures and the authority of the Board; the Board's procedures for reviewing listing/delisting decisions, and rule change recommendations; the Board's procedures for initiating actions; the functions and composition of the Quality of Markets Committee; and

functions of the Stockwatch Department.

Description of Amendments to Plan

The NASD is filing as part of this rule change three amendments to the Plan previously approved by the Commission in SR-NASD-96-16. The NASD is proposing to amend Article I.C.3 of the Plan that is titled *Contested Elections* in order to make clear that: (1) the term for which a candidate nominated by petition would be elected cannot subsequently be set by the Board of Governors of the NASD for a term shorter than that for which the Nominating Committee's candidate was proposed; and (2) the Nominating Committee certifies only that a nominee has satisfied the criteria for nomination by position in the category to be filled (i.e., Public, Non-industry, Industry).

In addition, the NASD is proposing to add a new subparagraph to Sections II.C. and III.C of the Plan. Those sections currently specify that disciplinary, statutory disqualification, listing/delisting, and rule filing actions by the subsidiaries may be called for review by the NASD Board at the meeting next following the subsidiary's board meeting, so long as the NASD Board meeting is at least 15 calendar days after the subsidiary's Board meeting. With the exception of rule filings, an action by one of the subsidiaries that is *not* called for review will only become a final action of the NASD *after* the expiration of the 15-day period. Rule filings that are referred by a subsidiary to the NASD Board are permitted to be reviewed immediately. If, however, the rule filing is not so referred, the Board's determination to review or not review on its own motion must wait for the expiration of the 15-day period. While this mandatory time period ensures that the NASD Board will have sufficient opportunity to determine whether or not to call for review, there are situations where the NASD believes it to be in the public interest to expedite its determination whether or not to call for review a disciplinary, statutory disqualification or rule filing action by a subsidiary board and, if a matter is called for review, to take appropriate action. Examples of situations that might require such an expedited treatment include: proceedings to revoke the registration of a member or person associated with a member when the associated person has become subject to a statutory disqualification or the member or the person has failed to pay an arbitration award; disciplinary proceedings imposing sanctions of expulsion of a member or bar of an associated person; and rulemaking that

results from a market emergency or otherwise requires submission to the Commission on an expeditious basis in the public interest.

(b) Statutory Basis for the Proposed Rule Change

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act⁶ in that the terms of the Plan will provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws.

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

The 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, as amended.

(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. However, in connection with the publication for member vote of proposed amendments to the By-Laws to implement the Plan in Notice to Members 95-101 (December 11, 1995), attached as Exhibit 2 to proposed rule change SR-NASD-96-02, the NASD received three comments which were attached as Exhibit 4 to that proposed rule change. The NASD's statement on the comments received with respect to Notice to Members 95-101 is set forth in SR-NASD-96-02 and was published by the Commission in Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996). SR-NASD-96-02 proposed certain of the By-Law amendments issued for member vote in Notice to Members 95-101 (December 11, 1995) in order to permit the reorganization of its Board of Governors consistent with the Plan submitted in SR-NASD-96-16.

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

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the

Stock Market. In addition the Plan does not address the NASD's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

⁵ The National Nominating Committee shall be composed of at least six and not more than nine members equally balanced between Industry and Non-Industry Committee Members (including at least two Public Committee Members). Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD, of which it is anticipated that at least three will be Non-Industry Members.

⁶ 15 U.S.C. 78o-3.

proposed rule change prior to the 30th day after publication in the Federal Register.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to carry out the purposes of the Act to comply with, and enforce compliance by its members and associated persons, with the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (with amendments to the NASD By-Laws simultaneously approved in SR-NASD-96-20, as set forth below) to assure a fair representation of the NASD's members, in the selection of its directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these rules and any subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(2) in particular and the Act in general.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries the NASDR and Nasdaq in accordance with the September 1995 recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The Plan, which is part of this proposed rule change, sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the NASDR and Nasdaq following the reorganization of the NASD. The NASD's Board of Governors, which has been reorganized to be consistent with the proposed rule change, has held meetings to carry out the business of the Association. The subsidiaries also have held meetings of the Board of Directors of NASDR and Nasdaq in order to carry out the business of the subsidiaries

during the 90 day period during which the Plan has been effective.

The proposed rule change, with the exception of the three amendments submitted herein, was previously filed with the Commission in SR-NASD-96-16 and was simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days in Release 34-37107. The 90-day approval period expires on July 10, 1996. No comment letters concerning SR-NASD-96-16 were received by the Commission. The reorganization of the NASD Board of Governors is also reflected in proposed rule changes to the NASD By-Laws submitted in rule filing SR-NASD-96-20 and published for comment by the Commission in Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996). The Commission is granting temporary accelerated approval to that proposed rule change.⁷

Accordingly, the Commission believes that accelerating the approval of the proposed rule change will benefit members and the public interest by fully implementing the reorganization of the NASD and its subsidiaries.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 the file number in the caption above and should be submitted by August 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-96-29 be, and hereby is, approved for a period of 120 days.

⁷ See Securities Exchange Act Release No. 37424 (July 11, 1996).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-18170 Filed 7-17-96; 8:45 am]

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[Release No. 34-37426; File No. SR-NASD-96-25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. ("NASD" or "Association") Relating to the Application of the Primary Nasdaq Market Maker Rule to Initial Public Offerings

July 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 21, 1996, the National Association of Securities Dealers ("NASD" or "Association") 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 the self-regulatory organization. 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

The NASD proposes to amend NASD Rule 4612,² the NASD's Primary Nasdaq Market Maker Standards Rule ("PMM Rule"), to clarify and codify NASD interpretations with respect to the application of the PMM Rule to initial public offerings ("IPOs"). A more detailed explanation and description of these interpretations will also be provided in a Special Notice-to-Members to be issued contemporaneously with the submission of this filing. Proposed new language is italicized:

NASD Rule 4612 Primary Nasdaq Market Maker Standards

* * * * *

(g)(2) * * *

(B) For initial public offerings (*IPOs*):

(i) the market maker may register in the offering and immediately become a

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Prior to the revision of the NASD Manual, Rule 4612 was Section 49 of the NASD Rules of Fair Practice.