

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 Delegation 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 proposed rule change as further amended by Amendment No. 4 prior to the 30th day after publication in the **Federal Register**.

### IV. Discussion

The Commission finds that the proposed rule change as further amended by Amendment No. 4 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 Delegation 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 period in which the Delegation Plan has been effective.

The instant proposed rule change was previously published for comment and approved by the Commission on a temporary basis for periods of 120 days and six months.<sup>10</sup> The six month approval period is scheduled to expire by May 15, 1997. No comment letters concerning the instant proposed rule change were received by the Commission. The reorganization of the NASD Board of Governors is also reflected in rule changes to the NASD By-Laws submitted in rule filing SR-NASD-96-20, which also was previously granted temporary approval for six months.<sup>11</sup> The Commission is also extending its temporary approval of that proposed rule change.<sup>12</sup>

Accordingly, the Commission believes that accelerating the approval of the proposed rule change as further amended by Amendment No. 4 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 June 12, 1997.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-29, as amended by Amendment No. 4, be, and hereby is, approved through November 15, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38644; File No. SR-NASD-96-20, Amendment No. 5]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval To Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Changes in the Structure of the NASD Board of Governors

May 15, 1997.

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 May 14, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 5 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.<sup>1</sup> The

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The NASD originally filed the rule change on May 28, 1996. On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended Article VI, Section 5 of the NASD By-Laws ("By-Laws") to clarify that, in a contested election, the term of office of a candidate certified by the National Nominating Committee for inclusion on the ballot for the election of Governors pursuant to Article VI, Section 7(c) would be identical to the term of office of a candidate nominated by the National Nominating Committee pursuant to Article VI, Section 7(c). Amendment No. 1 also amended

<sup>10</sup> Release Nos. 34-37425 and 34-37957, respectively.

<sup>11</sup> Securities Exchange Act Release No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996).

<sup>12</sup> See Securities Exchange Act Release No. 38644 (May 15, 1997).

Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 5 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

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

In 1995, the NASD Board of Governors ("Board") appointed The Select Committee on Structure and Governance ("Select Committee") to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. In September 1995, the Select Committee recommended, among other things, that the NASD establish two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market, Inc. ("Nasdaq"). The Select Committee recommended that each subsidiary have an independent Board of Directors with at least 50% public representation and that the NASD remain as parent corporation overseeing the operations of both subsidiaries. The

Article VI, Section 7(a) of the By-Laws to clarify that any person elected to the Board of Governors must be nominated or certified by the National Nominating Committee. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated June 4, 1996).

On July 2, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 provided the final report of the vote of the NASD membership with respect to the proposed rule change. 2,227 valid ballots were received from NASD members. 2,101 voted to approve the proposed rule change, 117 voted to disapprove the proposed rule change and 9 did not vote.

On July 10, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requested 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).

On November 12, 1996, the NASD filed Amendment No. 4 to the proposed rule change. Amendment No. 4 requested temporary approval of the proposed rule change for a period of six months. 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 November 12, 1996).

The Commission previously published notice of the proposed rule change (Securities Exchange Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996)) and granted accelerated approval to the proposed rule change for periods of 120 days and six months (Securities Exchange Act Release No. 37424 (July 11, 1996), 61 FR 37515 (July 18, 1996) and Securities Exchange Act Release No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996), respectively).

Select Committee recommended that the NASD Board of Governors be composed of a majority of public directors.

In January 1996, the NASD created a new subsidiary, NASD Regulation, Inc. ("NASD Regulation") to provide regulation and member and constituent services, with the NASD retaining responsibility for general oversight over the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries, Nasdaq and NASD Regulation, and final policymaking authority for the association as a whole. The NASD also adopted Select Committee proposals to restructure and reduce the size of the NASD Board and to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards.

On April 11, 1996, the Commission granted temporary approval for a period of 90 days to: (i) amendments to Article VII of the NASD By-Laws to create a national nominating committee to nominate persons to serve on the Board of Governors and reconstitute the Board as a majority non-industry Board;<sup>2</sup> (ii) NASD Rule 130 providing for the delegation of authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" ("Delegation Plan"); and (iii) the Delegation Plan.<sup>3</sup> The Delegation Plan sets forth certain purposes, functions and governance procedures of the three corporations working together.

On June 11, 1996, the Commission approved the instant proposed rule change for a period of 120 days. The rule change amended the By-Laws to conform them to the Delegation Plan. The rule change provided for the creation of a national nominating committee to identify and nominate for election industry and non-industry persons to serve on the Board; deleted references to the District and local administration, because responsibility for the local administration of regulatory affairs under the Delegation Plan has been assigned to NASD Regulation; conformed terms and rule citations to those used in the reorganized *NASD Manual* and made miscellaneous clarifying corrections to the By-Laws; and replaced all references to the NASD "Certificate of Incorporation" with references to the "Restated Certificate of Incorporation" to reflect that the

Certificate of Incorporation has been amended to be consistent with the changes previously adopted and proposed herein to the By-Laws. On November 15, 1996, the Commission extended temporary approval of the instant proposed rule change for an additional six months.<sup>4</sup>

The NASD hereby files this Amendment No. 5, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the amendments to the By-Laws for a period for six months.<sup>5</sup> During this interval, there will be no further amendments to the By-Laws, absent Commission approval of a corresponding Rule 19b-4 filing.<sup>6</sup>

### **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 V 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**

##### **1. Purpose**

The purpose of Amendment No. 5 is to ensure continued effectiveness of the amended NASD By-Laws while the Commission considers whether to grant permanent approval to the instant NASD rule filing. Amendment No. 5 is intended to ensure that the NASD continues to possess the requisite

<sup>4</sup> The Commission separately approved SR-NASD-96-29, amending the Delegation Plan, for periods of 120 days and six months. See Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) and Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1996), respectively.

<sup>5</sup> The NASD also filed Amendment No. 4 to SR-NASD-96-29, requesting an extension of the Commission's temporary approval of the Delegation Plan for a period of six months. The Commission is separately approving that rule change as further amended by Amendment No. 4. See Securities Exchange Act Release No. 38645, May 15, 1997.

<sup>6</sup> The NASD filed SR-NASD-97-28, to propose changes in the By-Laws of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, Membership Application Procedures, Disciplinary Proceedings, Other Proceedings, and Other Conforming Changes; the filing contains proposed amendments to the NASD By-Laws. The comment period for this rule filing expires on June 6, 1997. See Securities Exchange Act Release No. 34-38545 (April 24, 1997, 62 FR 25226 (May 8, 1997).

<sup>2</sup> Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) ("Release 34-37106").

<sup>3</sup> Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) ("Release 34-37107").

corporate authority to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee.

## 2. Statutory Basis

The NASD believes that the proposed rule change as further amended by Amendment No. 5 is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act<sup>7</sup> in that the restructured organization will: (1) 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; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

### *(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 of certain parts of the proposed rule change for member vote in Notice to Members 95-101, attached as Exhibit 2 to rule filing SR-NASD-96-02, the NASD received three comments, which were attached as Exhibit 4 to SR-NASD-96-02. The NASD's statement on the comments received with respect to Notice to Members 95-101 is set forth in rule filing SR-NASD-96-02 and was published by the Commission in Release 34-37106.

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

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its

publication in the **Federal Register** to avoid any interruption of the effectiveness of the amended By-Laws. The current authorization is scheduled to expire by May 15, 1997. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the self-regulatory organization functions currently assumed by NASD Regulation and Nasdaq pending Commission action on the proposed extension.

## IV. Discussion

The Commission finds that the proposed rule change as further amended by Amendment No. 5 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-96-29 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 instant proposed rule change was previously published for comment and approved by the Commission on a temporary basis for periods of 120 days and six months in Releases 34-37424 and 34-37956, respectively. The six month approval period is scheduled to expire by May 15, 1997. No comment letters concerning the instant proposed rule change were received by the Commission. The reorganization of the NASD Board of Governors is also reflected in rule changes to the NASD Delegation Plan submitted in rule filing SR-NASD-96-29, which also was previously granted temporary approval for periods of 120 days and six months.<sup>8</sup>

<sup>8</sup> See Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) and Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1996), respectively.

The Commission is also extending its temporary approval of that proposed rule change.<sup>9</sup>

The Commission finds good cause for approving the instant 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 NASD Regulation 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.

Accordingly, the Commission believes that accelerating the approval of the proposed rule change as further amended by Amendment No. 5 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, NW., Washington, DC 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 number SR-NASD-96-20, Amendment No. 5 and should be submitted by June 12, 1997.

## VI. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b)(2), (4),

<sup>9</sup> Securities Exchange Act Release No. 38645 (May 15, 1997).

<sup>7</sup> 15 U.S.C. § 78o-3.

and (6) of the Act <sup>10</sup> in that the restructured organization will: (1) 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 NASD members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

The NASD has requested that the Commission approve the proposed rule change on or before May 15, 1997, which is prior to the 30th day following publication of notice of the filing of the proposed rule change in the **Federal Register**, in order to permit the uninterrupted authorization of those corporate actions necessary to effectuate the Delegation Plan.

Pursuant to Section 19(b)(2) of the Act,<sup>11</sup> the Commission finds good cause for approving the proposed rule change, as further amended by Amendment No. 5, prior to the 30th day after publication in the **Federal Register**. The proposed rule change will permit the NASD to continue to carry out the functions and organize itself in the manner contemplated by the Delegation Plan, which is intended to enable the NASD to meet its regulatory and business obligations. Because the Commission believes that the proposed rule change facilitates the ability of the NASD to manage its affairs in a manner that enhances its ability to carry out the purposes of the Act and enforce compliance by NASD members and their associated persons with the provisions of the Act, the Commission believes that the rule filing should be approved without delay, for a six-month period.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR-NASD-96-20, as further amended by Amendment No. 5, be, and hereby is, approved effective through November 15, 1997.

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

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38639; File No. SR-NSCC-97-3]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding Exemption Processing

May 14, 1997.

On March 7, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-97-3) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on April 9, 1997.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The rule change modifies NSCC's procedures regarding exemption processing in NSCC's Continuous Net Settlement ("CNS") System.<sup>3</sup> A short position in CNS represents the quantity of securities owed to NSCC by the member. To satisfy short positions for purposes of settlement, securities are delivered from the member's account at The Depository Trust Company ("DTC") to NSCC's account at DTC.

As a part of the NSCC's CNS accounting operation, members may control the delivery of their securities to NSCC through the use of exemptions.<sup>4</sup> Through exemption limitations, a member may elect to deliver to NSCC all, part, or none of any short position. NSCC presently requires members to input exemption instructions on a daily basis and permits but does not require members to input standing instructions.

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

<sup>2</sup> Securities Exchange Act Release No. 38453 (March 28, 1997), 62 FR 17274.

<sup>3</sup> CNS is an on-going accounting system that nets a member's securities obligations on a daily basis to produce a short or long position in each issue and an overall settlement debit or credit.

<sup>4</sup> Exemptions assist members in complying with the segregation provisions of Rule 15c3-3 of the Act and in meeting other delivery needs.

Pursuant to this rule change, members are now required to input standing exemption instructions but need not input exemption instructions daily. If a daily instruction is not submitted, not received, or is received but cannot be processed by NSCC, the member's standing exemption instructions will be used.

#### II. Discussion

Section 17A(b)(3)(F)<sup>5</sup> of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change is consistent with NSCC's obligations under the Act because it makes the settlement process more efficient. Under the new procedures, NSCC participants will submit standing exemption instructions instead of daily instructions. Participants will then only need to submit exemption instructions when their delivery needs differ from their standing instructions. Thus, the proposal should reduce the number of instructions a participant needs to submit in order to settle transactions. Furthermore, the proposal will allow settlement to take place even if a member is unable to submit its exemption instructions. Thus, the proposal helps to ensure that transactions are settled promptly and accurately.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-97-3) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>10</sup> 15 U.S.C. § 78o-3.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 17 CFR 200.30-3(a)(12).