

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39175; File No. SR-NASD-97-71]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. ("NASD") to Proposed Changes in the By-Laws and Restated Certificates of Incorporation of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., and the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries

September 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 19, 1997, the National Association of Securities Dealers, Inc. ("Association" or "NASD") 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 self-regulatory organization.² 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 is filing a proposed rule change to amend: (1) The By-Laws of the NASD; (2) the By-Laws of NASD Regulation, Inc. ("NASD Regulation"); (3) the By-Laws of The Nasdaq Stock Market, Inc. ("Nasdaq"); (4) the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries ("Delegation Plan"); and (5) the Restated Certificates of Incorporation for the three corporations. Attachment A is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

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 self-regulatory organization 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 self-regulatory organization 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

a. *Introduction:* The purpose of the proposed rule change is to provide for a more efficient and effective corporate structure for the Association, to conform the Association's corporate documents to the recently amended Code of Procedure (Rule 9000 Series) and membership procedures (Rule 1010 Series), and to make the Association's corporate documents more consistent with one another.³ In particular, the proposed corporate structure is designed to streamline the decision making process to be more responsive to investor interests, improve communication among Board members and the staff, enable the Association to act quickly and decisively when necessary, and preserve the principles set forth in the September 15, 1995 *Report of the NASD Select Committee on Structure and Governance To The NASD Board of Governors* ("Select Committee Report").

Portions of the proposed rule change set forth in this rule filing were previously submitted and noticed in the **Federal Register** in SR-NASD-96-20,⁴ SR-NASD-96-29,⁵ and SR-NASD-97-28.⁶ No comments were received on those parts of these rule filings concerning the Association's corporate documents and the Delegation Plan.⁷ The Association believes that the changes to its corporate structure would be better understood if all changes to these documents were included in one rule filing. Therefore, the Association

withdrew its request for approval of the portion of the proposed rule change relating to the Association's corporate documents and the Delegation Plan set forth in SR-NASD-97-28 and included all proposed changes to its corporate documents and the Delegation Plan in this rule filing.⁸ In the description of the proposed rule change for each document below, the Association has identified the rule changes that are proposed for the first time in this rule filing.

To achieve the corporate objectives set forth above, the Association proposes to retain the current three corporation structure, but reduce the overall number of board members for the three corporations and create a new board structure, with both the Nasdaq and NASD Regulation Boards of Directors shrinking in size and becoming part of an expanded NASD Board of Governors.⁹ As a result, the Association would reduce the overall number of board members from 49 to 27, reduce the number of board meetings from 17 to seven, reduce the number of board committees from nine to five, and replace two subsidiary board executive committees with one parent board executive committee.¹⁰

The NASD Board would consist of 21 to 27 Governors and include a nucleus of Governors who would not serve as directors on either subsidiary board. The subsidiary boards each would have five to eight Directors, each of whom would be NASD Governors. The number of directors on each subsidiary board would be equal, thereby enabling the nucleus of individuals who served only as NASD Governors to perform a tie-breaking function on the parent board.

The NASD Board, while remaining ultimately responsible for the actions of its subsidiaries, would also retain its current authority to review and ratify or reject certain actions of the subsidiaries, although the process of exercising this authority would be expedited by transferring certain functions to new

⁸ See letter from Alden S. Adkins, General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 11, 1997 (Amendment No. 3 to SR-NASD-97-28).

⁹ Currently, the NASD Board has 11 Governors, the NASD Regulation Board has 24 Directors, and the Nasdaq Board has 14 Directors. The Board of Governors of the NASD is referred to herein as the NASD Board, and the Boards of Directors of NASD Regulation and Nasdaq are referred to herein as the NASD Regulation Board and the Nasdaq Board, respectively.

¹⁰ As explained below, the by-laws of each subsidiary would continue to authorize its board to appoint executive and finance committees, but the Association does not anticipate that the subsidiary boards will find it necessary to continue to appoint such committees.

¹ 15 U.S.C. § 78s(b)(1).

² On September 29, 1997, the NASD filed a technical amendment to the proposed rule change, the substance of which is included in this notice. See letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission. On September 30, 1997, the filing was further amended by the NASD to correct non-substantive typographical errors. Meeting between Mary Dunbar, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Division of Market Regulation, Commission.

³ All references to "Rule" followed by a four-digit number in this rule filing are references to one or more Rules of the Association, as defined in NASD By-Laws, Article I, Definitions.

⁴ Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996), as amended.

⁵ Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996), as amended.

⁶ Securities Exchange Act Release No. 38545 (April 24, 1997) 62 FR 25226 (May 8, 1997), as amended.

⁷ SR-NASD-96-20 and SR-NASD-96-29 include temporary approvals of the corporate governance documents and the Delegation Plan, respectively. Upon approval of this rule filing, temporary approval of 96-20 and 96-29 will be rescinded.

entities under each subsidiary board and changing several meeting schedules. First, the Association proposes to transfer the functions of the National Business Conduct Committee, a committee of the NASD Regulation Board composed entirely of Directors, to a new entity, the National Adjudicatory Council.¹¹ The National Adjudicatory Council would be appointed by the NASD Regulation Board, after nomination by the National Nominating Committee. Similarly, the Association proposes to transfer the functions of the Nasdaq Listing and Hearing Review Committee to a new Nasdaq Listing and Hearing Review Council ("Listing Council").¹² Listing Council members would be appointed by the Nasdaq Board. Except for the Chair of National Adjudicatory Council, members of the councils would not serve on any of the Association's boards.

These new councils would meet at least 15 days before the subsidiary boards and generally would provide written reports of their decisions to their respective boards not later than 15 days before the subsidiary board meetings. The subsidiary board meetings then would be scheduled to occur one day before the meetings of the NASD Board.¹³ Although matters delegated to each subsidiary would, as a matter of general practice, be considered by the subsidiary boards before proceeding to the NASD Board, the time required for final disposition would be significantly reduced by these structural and scheduling changes. Under the current structure and meeting schedule, the subsidiaries may have to delay issuing disciplinary, listing, and other decisions and filing rule proposals with the Commission until a parent board meeting is held, which may occur several weeks after the subsidiary board takes action. Such delay would be eliminated by the new corporate structure and meeting schedule.

In addition to compressing the time between subsidiary and parent board meetings, the proposed structural refinements would facilitate other efficiencies because members of the revamped subsidiary boards would constitute a subset of NASD Board members. For example, an NASD Regulation rule amendment that warrants consideration by the NASD Board could be taken directly to the NASD Board for action, thereby

avoiding the need for duplicative discussions of the same matter. The same would be true of rule amendments as to which NASD Board review is mandatory under the Delegation Plan. Thus, action on significant or controversial matters could be accomplished in one step, rather than the two steps that are currently required. Furthermore, because the Directors of both subsidiary boards would be Governors of the NASD Board, the consideration of matters at the NASD Board level always would have the benefit of subsidiary board participation.

To further expedite decision-making, the NASD Board would be specifically authorized by the Delegation Plan to take action on its own initiative. Thus, subsidiary board action on a matter within its sphere of delegated authority would not be a prerequisite to action by the NASD Board. Rather, the NASD Board would be authorized to take action *ab initio*.¹⁴

The Association believes that these changes are consistent with the core principles of corporate governance outlined in the Select Committee Report and the November 1995 *Select Committee on Structure and Governance—Staff Implementation Plan* ("Staff Implementation Plan"). The principles of the Select Committee Report and the Staff Implementation Plan include maintaining a balanced governance structure, an independent corporate structure, an independent and autonomous operating structure, and a clear and distinct role for each corporation. The proposed rule change maintains a balanced governance structure by providing for diversity among Industry Governors and Directors; providing for a majority of Non-Industry Governors on the parent board, including at least five Public Governors; and providing for at least 50 percent Non-Industry and Public Directors on the board of directors of each subsidiary. Maintaining two separate, wholly owned subsidiaries with their own Presidents ensures that independent corporate structures continue to exist. Preserving separate and independent professional staffs and substantial deference to the subsidiaries in their areas of jurisdiction reinforces an independent and autonomous operating structure. Finally, each corporation retains its clear and distinct role under the proposed rule change: The NASD continues to resolve conflicts between the subsidiaries and retain ultimate responsibility for statutory obligations, including its

responsibilities as a self-regulatory organization; NASD Regulation continues to perform the day-to-day regulation of brokers and dealers and to supervise surveillance of Nasdaq and other OTC markets; and Nasdaq continues to own and operate The Nasdaq Stock Market and develop and implement rules governing that market.

The proposed corporate structure also is consistent with the Undertakings set forth in the Association's August 8, 1996, settlement with the Commission.¹⁵ Specifically, the proposed rule changes comport with the requirements for balancing the Association's boards and committees,¹⁶ placing primary day-to-day responsibility for regulatory matters with NASD Regulation,¹⁷ providing for the autonomy and independence of the regulatory staff of the NASD and its subsidiaries,¹⁸ and ensuring the existence of a substantial, independent internal audit staff that reports directly to an audit committee of the NASD Board.¹⁹

b. Proposed Changes to NASD By-Laws: The expanded NASD Board would function much as it does today, with ultimate responsibility for the regulatory and market operation functions delegated to the subsidiary boards. Substantive changes to the NASD By-Laws are set forth below. Key changes related to the corporate restructuring are found in proposed Article VII, Sections 4, 5, 9, 10, and 13; Article IX, Sections 4 through 6; Article XV, Section 4(b); Article XVI, Section 1; and Articles XX and XXI. Stylistic changes and other minor, non-substantive changes are not described.²⁰

Proposed Article I. Definitions

The Association proposes several substantive amendments to Article I, which sets forth definitions for the NASD By-Laws. First, the Association proposes to move the following

¹⁵ Securities Exchange Act Release No. 37538 (August 8, 1996), 62 SEC Docket 1346, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3-9056 (the "Order").

¹⁶ See Proposed NASD By-Laws Article VII, Section 4 and Article IX; Proposed NASD Regulation By-Laws Article IV; Proposed Nasdaq By-Laws Article IV; Delegation Plan I.C., II.C.

¹⁷ See Proposed Delegation Plan II.A.1.

¹⁸ *Id.*

¹⁹ See proposed NASD By-Laws Article IX, Section 5.

²⁰ All references to Articles or Sections in this section "b" refer to the NASD By-Laws, unless otherwise noted.

¹¹ See proposed Article V of the NASD Regulation By-Laws.

¹² See proposed Article V of the Nasdaq By-Laws.

¹³ Amendments to the Association's Code of Procedure and other rules that contain NASD Board call-out authority will be proposed in a separate rule filing.

¹⁴ See Proposed Delegation Plan I.B.11.

definitions from the Delegation Plan²¹ to the appropriate corporate by-laws: "Industry Director"; "Industry Governor" or "Industry committee member"; "National Nominating Committee"; "Non-Industry Director"; "Non-Industry Governor" or "Non-Industry committee member"; "Public Director"; "Public Governor" or "Public committee member".²² Related, substantive provisions of the Delegation Plan also would be moved to the By-Laws of the appropriate corporate entity.

The Association also is proposing certain refinements to the NASD By-Laws' definitions of "Industry Governor", "Industry committee member", "Non-Industry Governor", and "Non-Industry committee member". Specifically, the Association proposes to exclude from the definition of Industry Governor or committee member a person who is or was an outside director of a broker or a dealer or a director not engaged in the day-to-day management of a broker or dealer. The Association proposes to include in the definition of Industry Governor, Director and Committee member a Governor, Director, or committee member who (1) is an employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (2) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (3) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (4) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership.

The Association proposes to delete from the definition of Non-Industry Governor or committee member specific references to (1) persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates, such as a broker or dealer established to distribute an affiliate's securities which are issued on a continuous or regular basis, or process the limited buy and sell orders of the shares of employee owners of the affiliate; and (2) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity. The Association believes that any person engaged in the day-to-day management of any broker or dealer, including a limited purpose broker or dealer, should be considered an Industry Governor or committee member.

Parallel amendments are proposed for the definitions of "Non-Industry Director" or "Non-Industry member" at the subsidiary level.

Second, the Association proposes to amend the term "person associated with a member" by adding a clause to clarify that the term includes any natural person registered under the Rules of the Association. The impetus for the proposed change is *Slade versus Metropolitan Life Ins. Co.*²³ *Slade* involved a former registered representative who sued his former employer, an NASD member, for wrongful termination. The member filed a motion to compel arbitration of the dispute. The member argued that because the former employee had signed a Form U-4, Uniform Application for Securities Industry Registration or Transfer, and had become registered with the firm, he was subject to the provision of the Form U-4 that requires arbitration of employment-related disputes. The former employee argued that although he signed the Form U-4, he never conducted any securities activities and never acted as an associated person of the member. The lower court ruled that the former employee was not required to arbitrate this dispute. The court held that the NASD's definition of associated person in Article 1(q) of its By-Laws used the words "engaged" in the member's investment banking and securities business, and because the former employee was not "engaged" in such

business, he was not covered by the definition of associated person. The court also noted that the former employee's job responsibilities were not among those listed by the associated person definition in the By-Laws. The member appealed this ruling and in September 1996, the Supreme Court, Appellate Division, affirmed the lower court ruling.²⁴ The New York Court of Appeals denied the member's request to review the September 1996 ruling.²⁵

Slade suggests that any person whose job title or position is not specifically identified in the By-Laws' definition of associated person would not be considered an associated person if he or she were not deemed to be "engaged" in the member's securities business. The same result might hold even for persons who are registered with a member firm pursuant to NASD Rules. To avoid this result, the NASD proposes to amend the definition of associated person to clarify that all registered persons are associated persons, regardless of whether they would be deemed to be engaged in the securities business.²⁶

Third, the Association proposes to delete the definition "rules of the Corporation" to avoid confusion with the more commonly used, but differently defined term, "Rules of the Association".²⁷ The term "rules of the Corporation" currently is used to refer collectively to the NASD Certificate of Incorporation, the NASD By-Laws, and the Rules of the Association. Given the restructuring of the NASD into three legal entities, such a collective term for all of the corporate documents of the Association would not be useful. Thus, under the proposed rule change, where a particular provision must be consistent with a particular corporate document, that document is specified. Similarly, the Association also proposes to delete the definitions of "Boards" and "Corporations" and instead refer to each corporate entity specifically where intended.²⁸ The term "Rules of the Association" or "Rules" is defined to mean the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as amended or supplemented. A cross-reference from the Rules of the

²⁴ 231 A.D.2d at 467.

²⁵ 676 N.E.2d at 500.

²⁶ See proposed NASD By-Laws Article I, "Definitions"; proposed NASD Regulation By-Laws Article I, "Definitions"; and proposed Nasdaq By-Laws Article I, "Definitions".

²⁷ See Current NASD By-Laws Article I(v).

²⁸ See Current NASD By-Laws Article I (d) and (i).

²¹ See Delegation Plan, I.A. and I.C.

²² See proposed NASD By-Laws Article I(n), (o), (bb), (cc), (dd), (ff), and (gg).

²³ Index No. 117688/94, Decision and Order of April 9, 1996 (Sup. Ct., N.Y. Co.), *aff'd*, 231 A.D.2d 467 (N.Y. 1996), *appeal denied*, 676 N.E.2d 500 (N.Y. 1996).

Association deferring to the NASD By-Laws is included in Rule 0121.

Finally, the following definitions are added or amended to reflect drafting conventions adopted to reflect the three corporation structure or other drafting conventions. Those definitions are: "Board"; "branch office"; "day"; "dealer"; "Delegation Plan"; "district"; "member"; "municipal securities dealer"; "NASD"; "Nasdaq"; "Nasdaq Board"; "Nasdaq Listing and Hearing Review Council"; "NASD Regulation"; "NASD Regulation Board"; and "National Adjudicatory Council".²⁹

Proposed Article II. Offices

The Association proposes to add a new Article II "Offices" that states the location of the registered corporate office of the NASD. This change makes the NASD By-Laws consistent with the NASD Regulation and Nasdaq By-Laws, which both include such a provision.

Proposed Article III. Qualifications of Members and Associated Persons

Current Article II, "Qualifications of Members and Associated Persons", is renumbered as proposed Article III. The Association proposes to conform Section 3, which addresses ineligibility of certain persons for membership or association, to the Rule 9520 Series, which sets forth rules for the Association's eligibility proceedings. Specifically, the Association proposes to amend Section 3(d) to clarify that *members* may use eligibility proceedings to obtain relief from the Association's eligibility requirements, *e.g.*, to resolve a statutory disqualification problem. As written, current Section 3(d) could be read to suggest that a broker or dealer seeking admission to the Association could use such proceedings to obtain relief from eligibility requirements as a means of gaining admission to the Association. That is not the Association's practice or the intent of the provision, and Section 3(d) is amended to remove this potential ambiguity.

The Association proposes to delete Section 3(d)(2), which addresses the status of members or persons engaged in eligibility proceedings, because that subject is addressed in the Rule 9520 Series. This change does not result in a substantive change in the Association's practice. Specifically, if a person is already associated with a member at the time a statutory disqualification is discovered, the person may remain associated with the member until final

action is taken under the Rules of the Association. If the person is a prospective employee, the person may not become associated with the member until the Association takes final action under the Rule 9520 Series.

The Association proposes to add a new Section 3(g) to clarify that the Board may delegate its authority under Section 3 in a manner not inconsistent with the Delegation Plan.

Finally, the Association proposes to amend Section 4(h) to conform it to the Act.

Proposed Article IV. Membership

Current Article III, Membership, is renumbered as proposed Article IV. The Association proposes to delete Section 1(a)(3), which requires members to release the Association from liability except for willful malfeasance.³⁰ The Association also proposes to conform Section 7 to changes in the Rule 1010 Series, which sets forth procedures for membership applications and changes in a member's ownership or operations.

Proposed Article V. Registered Representatives and Associated Persons

Current Article IV, "Registered Representatives and Associated Persons", is renumbered as proposed Article V. The Association proposes to delete current Section 2(a)(2), which requires registered representatives to release the Association from liability except for willful malfeasance.³¹

Proposed Article VI. Dues, Assessments, and Other Charges

Current Article V, "Dues, Assessments, and Other Charges", is renumbered as proposed Article VI. The Association proposes to add a new Section 5 that states that the NASD may delegate its authority regarding dues, assessments, and other charges in a manner not inconsistent with the Delegation Plan.

Proposed Article VII. Board of Governors

Current Article VI, "Board of Governors", is renumbered as proposed Article VII. The Association proposes to amend Section 1(c) to clarify the Board's authority to delegate its powers. Specifically, the Association proposes to amend Section 1(c) to provide that to the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and the By-Laws, the NASD may delegate any power of the NASD or its Board of Governors to a

committee appointed pursuant to proposed Article IX, Section 1, the NASD Regulation Board, the Nasdaq Board, or NASD staff in a manner not inconsistent with the Delegation Plan. The Association proposes to add parallel provisions to the NASD Regulation By-Laws and the Nasdaq By-Laws.³²

The Association proposes to amend Section 2. Proposed Section 2 authorizes the Board to cancel or suspend the membership of a member or suspend the association of a person associated with a member for failure to provide requested information. The proposed amendment provides for reinstatement pursuant to the Rules of the Association.³³ The Association also proposes to delete the delegation to the Chief Executive Officer and replace it with a delegation provision consistent with other provisions set forth in the proposed NASD By-Laws. Specifically, the Association proposes that the Board be permitted to delegate its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the Association.

The Association proposes to amend Section 4, which addresses the composition and qualifications of the Board, to conform to the new corporate structure. Under the proposed rule change, the NASD Board would consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the National Adjudicatory Council,³⁴ and at least 16 and not more than 22 Governors elected by the members of the NASD. Thus, the By-Laws would authorize a Board of 21 to 27 Governors in total. Proposed Section 4(a) further provides that the Governors elected by the members would include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, and a Nasdaq issuer. A majority of the Governors would be Non-Industry Governors, and the Non-Industry Governors would include five or six Public Governors, depending on the size of the Board. Section 4(b) is amended to prohibit the Chair of the National

³² See proposed NASD Regulation By-Laws Article IV, Section 4.1 and proposed Nasdaq Article IV, Section 4.1, respectively.

³³ See, *e.g.*, Rules 8225 and 9516.

³⁴ The National Adjudicatory Council is a new entity that would be appointed by the NASD Regulation Board and assume the responsibilities of the National Business Conduct Committee. A more detailed discussion of the National Adjudicatory Council's role and responsibilities is included below in the description of proposed Article V of the NASD Regulation By-Laws.

²⁹ See proposed NASD By-Laws Article I (c), (d), (g), (h), (i), (j), (q), (t), (u), (v), (w), (x), (y), (z), and (aa).

³⁰ This proposed deletion was not included in SR-NASD-97-28.

³¹ This proposed deletion was not included in SR-NASD-97-28.

Adjudicatory Council from serving as Chair of the Board. The Association believes that the responsibilities of each chairmanship require the attention of one individual.

Section 5, "Term of Office of Governors", is amended to reflect the Board structure. Under proposed Section 5, the Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq would serve as Governors until a successor was selected, or until death, resignation, or removal. The Chair of the National Adjudicatory Council would serve as a Governor for a term of one year, and generally could not serve more than two consecutive terms.³⁵ However, proposed Section 5 provides that a former Chair of the National Adjudicatory Council could serve as a Governor elected by the members of the NASD. The Governors elected by the members of the NASD would be divided into three classes and serve three-year terms. Such Governors generally could not serve more than two consecutive terms.

The Association proposes to add a new Section 6, "Disqualification", which addresses the disqualification of a Board member. Proposed Section 6 states that a Governor's term of office immediately terminates if the Board determines that: (a) The Governor no longer satisfies the classification (Industry, Non-Industry or Public Governor) for which the Governor was elected; and (b) failure to remove the Governor would violate the compositional requirements of the Board set forth in proposed Section 4. If a Governor's term of office terminates under this Section, and the remaining term of office of such Governor was not more than six months, during the period of vacancy the Board would not be deemed to be in violation of its compositional requirements by virtue of such vacancy. Proposed Section 6 replaces a provision currently in the Delegation Plan that provides for "automatic removal" if a Governor no longer satisfies the classification for which he or she was elected without describing any process for such removal.³⁶ The Association proposes this rule change to avoid any potential for the Board to take an *ultra vires* action in the event that a Governor

failed to notify the Board promptly of a change in his or her classification and continued to sit on the Board and cast votes before such removal took place.³⁷

Current Section 6, which addresses the filling of vacancies on the Board, is renumbered as proposed Section 7, "Filling of Vacancies". The Association proposes to move the current provisions of the Delegation Plan that address the filling of vacancies to this Section and to provide further that if the remaining term of office of the governorship to be filled is more than one year, then the replacement Governor must stand for election in the next annual election.³⁸

Current Section 7, "The National Nominating Committee", which describes nomination and election procedures, is expanded and renumbered as proposed Sections 9 through 14. Proposed Section 9, "The National Nominating Committee", sets forth the powers of the National Nominating Committee. The National Nominating Committee nominates Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board; Industry, Non-Industry, and Public Directors for the NASD Regulation Board and the Nasdaq Board; and Industry, Non-Industry, and Public members for the National Adjudicatory Council; and Industry and Non-Industry members for the Nasdaq Listing and Hearing Review Council.

Proposed Section 9 also includes and clarifies the compositional requirements for the National Nominating Committee, which are currently set forth in the Delegation Plan.³⁹ The Delegation Plan currently provides that a National Nominating Committee member may be removed for cause by a majority vote of the NASD Board. Proposed Section 9 refines this provision by specifying the causes for which a National Nominating Committee member may be removed—refusal, failure, neglect, or inability to discharge such member's duties. This same specific standard for removal is used throughout the Association's corporate documents for committee and council members.

Proposed Section 9 also includes a new provision that requires the Secretary of the NASD to collect from each nominee for Governor such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public

Governor. The Association proposes that the Secretary certify to the National Nominating Committee each nominee's classification to ensure that the compositional requirements of each Board are met.

Proposed Section 10, "Procedures for Nomination of Governors", largely parallels current Section 7(c) and adds provisions regarding contested elections currently located in the Delegation Plan. Conforming references also are made to proposed Article XXI, "Meetings of Members", a new article that provides for meetings of the membership. Proposed Section 10 clarifies the procedures for contested elections and changes the number of members that must sign a petition to support adding a candidate to the ballot for NASD Board elections. Currently, a person seeking to be added to a ballot must obtain the support of two percent of the members of the NASD. The Association proposes to increase the level to three percent of the members.⁴⁰ As is currently the case, a petition may be signed only by a member's Executive Representative. Proposed Section 10 also transfers the authority to certify the additional candidate from the National Nominating Committee to the Secretary. Because the Secretary maintains the records of Executive Representatives, and under the proposed rule change would be charged with reviewing information regarding the classification (Industry, Non-Industry, or Public) for each governorship, the Association believes that it would be more efficient for the Secretary to exercise this authority.

Proposed Sections 11, "Communication of Views", 12, "Administrative Support", and 15, "Resignation", are new provisions that parallel new provisions added to the NASD Regulation and Nasdaq By-Laws. Proposed Section 11 prohibits the NASD, the Board, the National Nominating Committees, other committees, and NASD staff from taking any official position regarding a contested nomination or election under the proposed NASD or NASD Regulation By-Laws. Proposed Section 11 permits Board and committee members to communicate their views with respect to a candidate in a contested election only if the Board or committee member acts solely in his or

³⁵ Under the proposed rule change, the Chair of the National Adjudicatory Council, who serves a term of one year, simultaneously would serve as a Governor of the NASD Board and a Director of the NASD Regulation Board. See proposed Articles IV and V of the NASD Regulation By-Laws. Thus, this proposed change is intended to ensure that the terms for each of these positions run concurrently.

³⁶ See Delegation Plan, I.C.5.b.

³⁷ If a disqualified governor's term is greater than 6 months, a qualifying replacement would be provided pursuant to proposed Section 7.

³⁸ See current Delegation Plan, I.C.5.

³⁹ See current Delegation Plan, I.C.2.b.(1).

⁴⁰ In SR-NASD-97-28, the Association proposed to change this provision to require supporting petitions from three percent of the members, one-half of which would have to be obtained from members outside of the district in which the challenger was employed. The Association has determined that it will not propose a requirement for out-of-district support.

her individual capacity and disclaims any intention to communicate in any official capacity. Under proposed Section 12, administrative support to the candidates in a contested NASD election is limited to two mailings; any other administrative support in any NASD or NASD Regulation contested election or nomination is prohibited. Proposed Section 15 adds resignation provisions that parallel Article 4, Section 4.5 in the NASD Regulation and Nasdaq By-Laws.

Proposed Section 13, "Election of Governors", is largely parallel to current Section 7(a), with conforming amendments to proposed Sections 9 through 12 and a new cross-reference to proposed Article XXI, which sets forth procedures for membership meetings.

Proposed Section 14, "Maintenance of Compositional Requirements of the Board", is a new procedure that requires each Governor to update the information submitted to the NASD Secretary under proposed Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and upon request of the Secretary and to report immediately to the Secretary any change in such classification. Parallel provisions are proposed for the NASD Regulation and Nasdaq By-Laws. These submissions and reports will help the Association ensure that the compositional requirements of the Board and its committees are maintained.

The Association proposes to amend current Section 8, "Meetings of Board; Quorum; Required Vote", which addresses meetings, quorums, and voting of the Board, to provide that a quorum consists of a majority of the Board then in office, including not less than 50 percent of the Non-Industry Governors.⁴¹ This proposed change would ensure that Industry Governors alone could not constitute or dominate a quorum of the Board, and thereby thwart the balanced compositional requirements of the Board under proposed Section 4. Current Section 8 is not renumbered.

Proposed Article VIII. Officers, Agents, And Employees

Current Article VII, "Officers, Agents, and Employees", is renumbered as proposed Article VIII. The Association proposes to amend Section 1, "Officers", to require that the NASD Board elect a Secretary and a Chief

Operating Officer. Under current Section 1, the NASD Board is authorized, but not required, to elect a Secretary. Given the number of responsibilities assigned to the Secretary under the proposed By-Laws and the NASD Board's practice of always electing a person to such position, the Association proposes to require that a Secretary be elected. The Board also must elect a Chief Operating Officer because such officer serves on the Board under proposed Article VII, Section 4.

The Association proposes to amend Section 3, "Agents and Employees", to provide that agents and employees shall be under the supervision and control of the officers, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.⁴² Generally, agents and employees are under the supervision and control of the officers, but the NASD Board may wish in certain circumstances to retain control over an employee or agent, e.g., as in Section 4, when the Board determines that it wishes to retain counsel.

The Association proposes to move current Section 5, which provides for compensation of Board and committee members, to its own Article, proposed Article X, "Compensation of Board and Committee Members".

The Association proposes to add new Sections 5, 6, and 7 to this Article to conform it to proposed Article 7 of the NASD Regulation By-Laws and proposed Article 6 of the Nasdaq By-Laws. Proposed Section 5 permits the Board to delegate the duties and powers of any officer to any other officer. Proposed Section 6 provides for the resignation and removal of officers. Proposed Section 7 permits the NASD to secure the fidelity of its officers, agents, and employees by bond or otherwise.

Proposed Article IX. Committees

Current Article VIII, "Committees", which addresses the formation and powers of committees, is renumbered as proposed Article IX. The Association proposes to amend Section 1 to cross-reference proposed Article VII, Section 1(c), which limits the Board's authority to delegate its powers and authority.

The Association proposes to add a new Section 2, "Maintenance of Compositional Requirements of Committees", which is designed to help the Association maintain the compositional requirements of certain

committees. Undertakings 1 and 6 under the Order require certain committees⁴³ to have a particular balance of Industry, Non-Industry, and Public committee members.⁴⁴ To help ensure that compositional requirements are maintained for committees appointed by the NASD Board, proposed Section 2 authorizes the Secretary to collect from each prospective member of a committee that must be balanced such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary must certify to the Board each prospective committee member's classification. Each committee member must update the information submitted at least annually and upon request of the Secretary of the NASD, and must report immediately to the Secretary any change in such classification. Parallel provisions are set forth in proposed Article 4, Section 4.13(h) of the NASD Regulation By-Laws and proposed Article 4, Section 4.13(h) of the Nasdaq By-Laws.

Current Section 2, "Removal of Committee Member", which addresses removal of a committee member, is renumbered as proposed Section 3 and amended to clarify that a committee member can only be removed for refusal, failure, neglect, or inability to discharge his or her duties by majority vote of the whole Board.

The Association proposes to add new sections to authorize the appointment of an Executive Committee and a Finance Committee and to require, consistent with Undertaking 6, the appointment of an Audit Committee. Proposed Section 4, "Executive Committee", authorizes the NASD Board to appoint an

⁴³ Undertaking 1 sets forth compositional requirements for "the National Nominating Committee, the Trading/Quality of Markets Committee, the Arbitration Committee, the Market Surveillance Committee, the National Business Conduct Committee, the Management Compensation Committee, and all successors thereto." Undertaking 6 sets forth compositional requirements for an audit committee. The current names of such committees are the National Nominating Committee, the Quality of Markets Committee, the National Arbitration and Mediation Committee, the Market Regulation Committee, the National Adjudicatory Council, the Management Compensation Committee, and the Audit Committee.

⁴⁴ The compositional requirements for the National Nominating Committee and the Audit Committee are set forth in the NASD By-Laws. The compositional requirements for the National Adjudicatory Council are set forth in the NASD Regulation By-Laws. The compositional requirements for the Quality of Markets Committee, the National Arbitration and Mediation Committee, the Market Regulation Committee, and the Management Compensation Committee are set forth in the Delegation Plan and the Order.

⁴¹ Other provisions in this filing that state that a quorum consists of a majority of a board, committee, or council also mean a majority of the board, committee, or council then in office.

⁴² But see proposed NASD By-Laws Article IX, Section 5(d). The Office of Internal Review and the Director of Internal Review are under the supervision and control of the Audit Committee.

Executive Committee composed of five to nine Governors of the NASD Board, with percentages of Non-Industry and Public committee members as least as great as the percentages of Non-Industry and Public Governors on the Board. The Executive Committee would include the NASD Chief Executive Officer/Chairman, at least one member each of the NASD Regulation and Nasdaq Boards, and at least two Governors who are not Directors of NASD Regulation of Nasdaq. The Executive Committee would be authorized (consistent with Delaware law) to act on behalf of the NASD Board. A quorum for the transaction of business at Executive Committee meetings would consist of a majority of the Executive Committee, including at least 50 percent of the Non-Industry committee members.⁴⁵

Proposed Section 5, "Audit Committee", contains the provisions relating to the Audit Committee currently found in the Delegation Plan,⁴⁶ except that the compositional provisions are amended to require that two (rather than one) Public Governors serve on the Committee. A quorum for the transaction of business at Audit Committee meetings would consist of a majority of the Audit Committee, including at least 50 percent of the Non-Industry committee members. The current Delegation Plan provides that subsidiary directors serve as liaisons to the Audit Committee rather than as full members of the Committee.

Proposed Section 6, "Finance Committee", authorizes the Board to appoint a Finance Committee composed of at least four Governors, including the Chief Executive Officer of the NASD. The Finance Committee would be balanced, with the number of Non-Industry Governors equaling or exceeding the number of Industry Governors plus the Chief Executive Officer. A quorum for the transaction of business at Finance Committee meetings would consist of a majority of the Finance Committee, including at least 50 percent of the Non-Industry committee members.

If any officer of the NASD, NASD Regulation or Nasdaq serves as a member (other than an ex-officio member) of a committee appointed under the by-laws of any of the three corporations, such officer will be counted with the Industry committee

members for purposes of any compositional or quorum requirements.

Finally, the resolution concerning interpretations and explanations is deleted because the NASD Board rescinded it on June 26, 1997. The resolution no longer conforms to Association practice and is contrary to Undertaking 4.

Proposed Article X. Compensation of Board and Committee Members

As noted previously, current Article VII, Section 5, which addresses compensation of Board and committee members, is renumbered as proposed Article X, "Compensation of Board and Committee Members".

Proposed Article XI. Rules

Current Article IX, "Rules", which authorizes the NASD to adopt rules, is renumbered as proposed Article XI. No substantive changes are proposed.

Proposed Article XII. Disciplinary Proceedings

Current Article X, "Disciplinary Proceedings", which authorizes disciplinary proceedings, is renumbered as proposed Article XII. No substantive changes are proposed.

Proposed Article XIII. Powers of Board to Impose Sanctions

Current Article XI, "Powers of Board to Prescribe Sanctions", which authorizes the NASD Board to impose sanctions, is renumbered as proposed Article XIII. The Association proposes to amend Section 1(e) and add a new Section (2) to clarify that any delegation under the proposed Article must be in conformity with the Delegation Plan.

Proposed Article XIV. Uniform Practice Code

Current Article XII, "Uniform Practice Code", is renumbered as proposed Article XIV. The Association proposes to amend Section 2, "Administration Code", to provide that the Board may delegate its authority with respect to administering the Uniform Practice Code to the NASD Regulation Board and Nasdaq Board in accordance with the Delegation Plan.

Proposed Article XV. Limitation of Powers

Current Article XIII, "Limitation of Powers", is renumbered as proposed Article XV. On June 26, 1997, the NASD Board rescinded the resolution that follows current Article XIII, Section 2, which provides for the use of the NASD's name by members. The provisions of the resolution have been

moved to IM-2210-4 of the Rules of the Association.

The Association proposes to amend Section 4, "Conflicts of Interest", which addresses conflicts of interest. The Association proposes to amend Section 4 by redesignating it as Section 4(a) and therein prohibiting any Governor or committee member from directly or indirectly participating in any adjudication of the interests of any party if the Governor or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. Proposed Section 4(a) further requires the Governor or committee member to recuse himself or herself or be disqualified in accordance with the Rules of the Association.⁴⁷ Current Section 4 simply references the Rules of the Association. The standard set forth in proposed Section 4(a) is consistent with the conflict of interest standard in Rule 9160.

In addition, the Association proposes to add a new Section 4(b) to address conflicts of interests in non-adjudicatory matters in a manner consistent with the By-Laws for the NASD Regulation Board and the Nasdaq Board. Proposed Section 4(b) provides that a contract or transaction between the NASD and a Governor or officer, or between the NASD and any entity in which a Governor or officer is a director or officer, or has a financial interest, is not void or voidable solely for this reason, or solely because the Governor or officer is present at the meeting of the Board or committee that authorizes the contract or transaction, or solely because the Governor's or officer's vote is counted for such purposes if: (1) The material facts pertaining to such relationship or interest are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (2) the contract or transaction is fair to the NASD as of the time it is authorized, approved, or ratified by the Board or committee. Proposed Section 4(b) provides that only disinterested Governors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction. A contract or transaction between the NASD and one of its subsidiaries would not be subject to proposed Section 4(b).

Finally, Section 6, "Government Securities", which limits the Association rulemaking authority over

⁴⁵ Similar quorum requirements would be imposed on the Executive Committees of the subsidiaries, the NASD Finance Committee, the National Nominating Committee, the Audit Committee, the Management Compensation Committee, and the National Adjudicatory Council.

⁴⁶ See current Delegation Plan, I.D.

⁴⁷ See, e.g., Rule 9160.

government securities activities, is deleted to conform the By-Laws to changes previously made to the Association's authority over the government securities activities of its members.

Proposed Article XVI. Procedure for Adopting Amendments to By-Laws

Current Article XIV, "Procedure for Adopting Amendments To By-Laws", is renumbered as proposed Article XVI and amended. Currently, a Governor, a district committee, or 25 members may propose amendments to the By-Laws. Proposed Article XVI permits committees appointed by the Board, rather than district committees, to propose By-Law amendments. Under the new corporate structure, proposals by the district committees normally would be presented to the NASD Regulation Board first, or if presented directly to the NASD Board, would be presented by the NASD Regulation President.

Proposed Article XVII. Corporate Seal

Current Article XV, "Corporate Seal", is renumbered as proposed Article XVII. There are no substantive changes to proposed Article XVII.

Proposed Article XVIII. Checks

Current Article XVI, "Checks", is renumbered as proposed Article XVIII. There are no substantive changes to proposed Article XVIII.

Proposed Article XIX. Annual Financial Statement

Current Article XVII, "Annual Financial Statement", is renumbered as proposed Article XIX. There are no substantive changes to proposed Article XIX.

Proposed Article XX

The Association proposes to add a new Article XX, "Record Dates". Consistent with Delaware law, proposed Section 1, "Fixing of Date by Board", permits the Board to fix a record date to determine the members that are entitled to notice of or to vote at member meetings. Proposed Section 2, "Default Date", provides for a default record date if the Board does not fix such a date. Proposed Section 3, "Adjournment", provides that a determination of members of record also applies to an adjournment of a member meeting.

Proposed Article XXI

The Association proposes to add a new Article XXI, "Meetings of Members". Proposed Section 1, "Annual Meeting", authorizes the NASD Board to designate a time and

place and set an agenda for an annual meetings of members. Proposed Section 2, "General Meeting", sets forth procedures for setting the agenda of special meetings. Proposed Section 3, "Notice of Meeting; Member Business", sets forth notice requirements for meetings. Proposed Section 4, "Inspector", describes voting procedures. Proposed Section 5, "Conduct of Meeting", states that the Chief Executive Officer of the NASD acts as Chair of the meeting and authorizes the Board to adopt rules and regulations for the conduct of meetings.

c. Proposed Changes to NASD Regulation By-Laws: NASD Regulation adopted its current By-Laws on July 19, 1996. The Association proposes to amend the NASD Regulation By-Laws to conform them to the changes described in the introduction to Section II of this rule filing. In addition, the Association proposes to explicitly recognize the NASD as the sole stockholder of NASD Regulation capital stock and add new articles describing the composition and powers of a new National Adjudicatory Council, procedures for nominations to the National Adjudicatory Council, and procedures for district elections. Significant changes to the NASD Regulation By-Laws are described below, including changes relating to the corporate restructuring in proposed Article IV, Sections 4.2, 4.3, 4.4(b), 4.13, 4.14(b); Article V; Article VI. Minor, non-substantive changes and changes to reflect drafting conventions are not described.⁴⁸

Proposed Article I. Definitions

First, a new Article I, entitled "Definitions", is proposed. Current Article I, "Offices" is renumbered as proposed Article II.

The Association proposes that the By-Laws for each corporate entity have a free-standing set of definitions. Therefore, the Association proposes to add definitions for the following terms, which conform to the definitions in proposed Article I of the NASD By-Laws: "Delegation Plan"; "Executive Representative"; "Industry Director" or "Industry member"; "NASD Regulation"; "National Adjudicatory Council"; "National Nominating Committee"; "Non-Industry Director" or "Non-Industry member"; "person associated with a member"; and "Public Director" or "Public member".⁴⁹

The Association proposes to include the following definitions only in the

NASD Regulation By-Laws: "District Committee"; "District Director"; "District Nominating Committee"; "district office"; "Independent Agent"; and "Regional Nominating Committee". These terms relate to the nomination and election procedures set forth in proposed Article VI, "National Adjudicatory Council Regional Nominations for Industry Members", and Article VIII, "District Committee and District Nominating Committee" and therefore are not used in the proposed NASD and Nasdaq By-Laws.

In addition, the Association proposes to add the following definitions for clarity and to conform to the drafting conventions adopted generally, but which do not result in any substantive change: "Board"; "day"; "Delaware law"; "Director"; "NASD"; "NASD member"; and "Rules of the Association" or "Rules".⁵⁰

Proposed Article II. Offices

Current Article I, "Offices", is renumbered as proposed Article II. Sections 1.1 and 1.2 are renumbered as Sections 2.1 and 2.2. There are no substantive changes in proposed Article II.

Proposed Article III. Meetings of Stockholders

Current Article II, "Meetings of Stockholders", is renumbered as proposed Article III. Current Article II sets forth general provisions for meetings of stockholders consistent with Delaware law. In proposed Article III, in recognition of the fact that NASD Regulation has only one stockholder, the Association proposes to delete all of the general provisions regarding meetings of stockholders and retain only the provision on which NASD Regulation generally relies, namely obtaining the stockholder's written consent for any action that is required or permitted to be taken at a stockholder meeting. Thus, Sections 2.1 through 2.6 are deleted, and Section 2.7 is renumbered as Section 3.1.

Proposed Article IV. Board of Directors

Current Article III, "Board of Directors", is renumbered as proposed Article IV. Sections 3.1 through 3.4 are renumbered as Section 4.1 through 4.4. Proposed Section 4.1, "General Powers", sets forth the general powers of the Board. The Association proposes to conform the Board's authority to delegate its powers to the delegation authority set forth in proposed Article VII, Section 1(c) of the NASD By-Laws,

⁴⁸ All references to Articles or Sections in this section "c" refer to the NASD Regulation By-Laws, unless otherwise noted.

⁴⁹ See proposed Section 1.1(h), (o), (q), (u), (v) (w), (x), (y), and (z).

⁵⁰ See proposed Section 1.1(b), (e), (g), (i), (r), (t), and (bb).

i.e., to the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed under proposed Section 4.14 or to NASD Regulation staff in a manner not inconsistent with the Delegation Plan.

The Association proposes to amend Sections 4.2, "Numbers of Directors", and Section 4.3, "Qualifications". The Association proposes that the NASD Board appoint the NASD Regulation Directors from among the NASD Board of Governors. The NASD Regulation Board would be composed of between five and eight Directors, including the NASD Regulation President, a representative of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member, and at least one or two Public Directors, depending on the size of the Board. The number of Non-Industry Directors would be equal to or greater than the number of Industry Directors plus the President. As noted above, the Chair of National Adjudicatory Council would serve simultaneous one-year terms on the NASD and NASD Regulation Boards. Finally, the total number of NASD Regulation Directors would equal the total number of Nasdaq Directors.

Proposed Section 4.3(b) is a new provision requiring the Board to elect a Chair and Vice Chair from among its members.

Proposed Section 4.4(a), "Election", which provides for the election of Directors, is amended to reflect the NASD's role as sole stockholder. As described in proposed Article VII, Section 9 of the NASD By-Laws, the National Nominating Committee, an NASD Board committee, nominates Directors for the NASD Regulation Board.

Current Section 3.5, "Term", is deleted. Under the proposed rule change, the NASD Board would elect Directors annually; thus the Board would not be divided into classes.⁵¹ As a general matter, NASD Regulation Directors would be appointed for three one-year terms that coincide with their terms on the NASD Board. However, the NASD Board would retain flexibility in this regard and could appoint individuals to serve where they are best qualified or best able to serve. Thus, for example, an individual who has served one year on the NASD Regulation Board could be appointed to Nasdaq Board, or could serve on the NASD Board alone.

Current Section 3.7, "Removal", is renumbered as proposed Section 4.6. Proposed Section 4.6 clarifies that a Director may be removed from office only by a majority vote of the NASD Board.

Proposed Section 4.7, "Disqualification", and proposed Section 4.8, "Filling of Vacancies", are new. Current Sections 3.8 through 3.11 ("Quorum and Voting", "Regulation", "Meetings", and "Notice of Meetings", respectively) are renumbered as proposed Sections 4.9 through 4.12. Current Section 3.12, "Conflicts of Interest", is renumbered as proposed Section 4.14. Current Section 3.13, "Committees of the Board of Directors", is renumbered as proposed Section 4.13 and retitled "Committees". Current Section 3.14, "Action Without Meeting", is renumbered as proposed Section 4.15.

Proposed Sections 4.7, "Disqualification", 4.8, "Filling of Vacancies", 4.9, "Quorum and Voting", and 4.14, "Contracts and Transactions Involving Directors", which set forth provisions for disqualification, filling of vacancies, quorums, and conflicts of interest, are designed to parallel proposed Article VII, Sections 6 through 8, and proposed Article XV, Section 4 of the NASD By-Laws.⁵²

There are no substantive changes in proposed Section 4.10, "Regulation", proposed Section 4.11, "Meetings", or proposed Section 4.15, "Action Without Meeting".

In proposed Section 4.12, "Notice of Meeting; Waiver of Notice", the Association proposes to increase the amount of time required for mail notice of a meeting from two to seven days, to clarify that any of the permissible forms of notice described may be used for any meeting of the Board, and to add a subsection that provides that any meeting of the Board is a legal meeting without any prior notice if all Directors are present.⁵³

Proposed Section 4.13 "Committees", (current Section 3.13 as renumbered)

⁵² There is one difference between the conflicts of interest provision for the NASD and the conflicts of interest provisions for the subsidiaries. The proposed By-Laws for NASD Regulation and Nasdaq provide that a transaction also is not void or voidable if the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder, *i.e.*, the NASD, and the contract or transaction is approved in good faith by vote of the stockholder. See proposed Article IV, Section 4.14 in both the NASD Regulation and Nasdaq By-Laws.

⁵³ A Director is still permitted, pursuant to Section 12.3(b), to attend a meeting for the express purpose of objecting, at the beginning of a meeting, to the transaction of any business because the meeting is not lawfully called or convened.

sets forth new provisions regarding committees. Proposed Section 4.13(a) authorizes the Board to appoint committees. Proposed Section 4.13(b) describes how the Board may delegate authority to such committees. In accordance with the functions and responsibilities set forth in the Delegation Plan, the Board may delegate its authority to any duly appointed committee. Any action by such committee is subject to review, ratification, or rejection by the Board. In addition, such delegations must be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. These limitations previously were set forth in the Delegation Plan. Proposed Section 4.13(b) further clarifies that, with respect to other matters, the Board may delegate its powers and authority to act on behalf of the Board in managing the business and affairs of NASD Regulation only to committees consisting solely of one or more Directors, and that any such delegation must be not inconsistent with the Delegation Plan.

Proposed Sections 4.13(f) and (g) authorize the NASD Regulation Board to appoint an Executive Committee and a Finance Committee.⁵⁴ Proposed Section 4.13(h) mirrors Article IX, Section 2 of the NASD By-Laws.

Proposed Section 4.16, "Communication of Views Regarding Contested Election or Nomination", which concerns communication of views during a contested election or nomination, parallels Article VII, Section 11 of the NASD By-Laws.

Proposed Article V. National Adjudicatory Council

Proposed Article V is a new article that requires the NASD Regulation Board to appoint a National Adjudicatory Council. The adjudicatory functions of the National Business Conduct Committee would be transferred to the National Adjudicatory Council, and the authority to appoint a National Business Conduct Committee would be deleted from the Delegation Plan. The National Adjudicatory Council would operate much as the National Business Conduct Committee currently operates under the Delegation Plan. However, in order to ensure that there is adequate time for the NASD Regulation and NASD Boards to consider adjudicatory decisions of the National Adjudicatory Council, written

⁵⁴ The by-laws of each subsidiary would continue to authorize its board to appoint executive and finance committees, but the Association does not anticipate that the subsidiary boards will find it necessary to continue to appoint such committees.

⁵¹ See Section 211(b) of the General Corporation Law of the State of Delaware.

reports of National Adjudicatory Council actions would be provided to the Secretary of the NASD no later than 15 calendar days before regularly scheduled meetings of the revamped NASD Board.⁵⁵ Thus, the National Adjudicatory Council would have greater flexibility than currently exists in scheduling the National Business Conduct Committee's work, and could meet telephonically if needed in order to reduce the time demands of National Adjudicatory Council service. Absent exigent circumstances, however, the National Adjudicatory Council would schedule its adjudicatory work to provide a 15 calendar day review period. In addition, the National Adjudicatory Council would have the option of holding telephonic meetings on an as-needed basis to expedite NASD Regulation Board consideration of disciplinary-related policy matters.

The National Adjudicatory Council's areas of responsibility are set forth in proposed Section 5.1 "Appointment and Authority". These areas include disciplinary and statutory disqualification decisions and other miscellaneous and policy matters. The National Adjudicatory Council also would assume certain other review functions, including reviews of denials of access, denials of exemptions, limitations on operations, and membership proceedings. As is the case with the current National Business Conduct Committee, the National Adjudicatory Council would consider and make recommendations to the NASD Regulation Board on policy and rule changes relating to: (1) The business and sales practices of NASD members and associated persons; and (2) enforcement policies, including policies with respect to fines and other sanctions.

Proposed Section 5.2, "Number of Members and Qualifications", describes the compositional requirements of the National Adjudicatory Council. It would be composed of 12 to 14 members, including at least three Public members. The number of Non-Industry members would equal or exceed the number of Industry members.

Proposed Section 5.3, "Nominations Process", sets forth the nomination process for membership on the National Adjudicatory Council. All members of the National Adjudicatory Council would be proposed by the National Nominating Committee and appointed by the NASD Regulation Board. Beginning in 1998, the Industry members of the National Adjudicatory

Council would be nominated pursuant to procedures that are similar to current procedures for the nomination of regional Industry Directors to the NASD Regulation Board. The regional nominating process for the National Adjudicatory Council is set forth in proposed Article VI.

Under proposed Section 5.4, "Term of Office", all National Adjudicatory Council members would be appointed for a one-year term in 1988. Regional nominations would be held at the end of 1998, and each National Adjudicatory Council member would serve a term of one or two years beginning in 1999, with staggered two-year terms thereafter. Proposed Sections 5.5 through 5.10, which set forth procedures for resignation, removal, disqualification, filling of vacancies, quorum and voting, and meetings, are derived from similar provisions in the NASD and NASD Regulation By-Laws.

Proposed Article VI. National Adjudicatory Council Regional Nominations for Industry Members

The Association proposes to add a new Article VI, National Adjudicatory Council Regional Nominations for Industry Members, to the NASD Regulation By-Laws. The procedures are based on the procedures for regional nominations to the NASD Regulation Board, which are currently set forth in the Delegation Plan⁵⁶ and in NASD Regulation Board resolutions. The regional nomination process would begin in 1998 for the 1999 National Adjudicatory Council.

The Industry members of the National Adjudicatory Council would represent a geographical region of the United States. Each Industry member initially would be nominated by a Regional Nominating Committee. Each Regional Nominating Committee then would present a nominee to the National Nominating Committee to represent such region on the National Adjudicatory Council. The Regional Nominating Committee would act essentially in an advisory capacity because only the National Nominating Committee could formally nominate to the NASD Regulation Board an Industry member for the National Adjudicatory Council. The NASD Regulation Board, in turn, could appoint or reject the candidates nominated by the National Nominating Committee.

Proposed Article VI sets forth the following procedures for the regional nominating process. As previously noted, the Board would designate regions. Each region would have a Regional Nominating Committee, which

would be composed of two to four members from each District Committee in the region. These members would be selected by their District Nominating Committee.⁵⁷ When the term of office of a National Adjudicatory Council member representing a region was due to expire, the Secretary of NASD Regulation would notify the appropriate Regional Nominating Committee, which would initiate the regional nominating process.

The Regional Nominating Committee would receive from the Secretary of NASD Regulation a description of the firms eligible to vote in the region. Firms eligible to vote are those that either are headquartered in the region or have a branch office in the region. In making nominations, the Regional Nominating Committee would seek to ensure appropriate and fair representation of the classes and types of firms eligible to vote in the region. The Regional Nominating Committee could nominate more than one candidate so that the NASD membership in the region could vote on a nominee to present to the National Nominating Committee. (This process would work in the same manner as a contested nomination, which is described below.)

Once the Regional Nominating Committee selected a nominee (or nominees), it would send notice of its nomination to the Executive Representative of each NASD member eligible to vote. The Executive Representative is the officer or employee of the member who casts votes for the member in all nominations and elections. If any person not nominated wished to contest a nomination, he or she would send notice of intent to contest to the Regional Nominating Committee or the Secretary of NASD Regulation within a specified period. Such person then would be required to submit within a specified period a written petition signed by at least ten percent of the members eligible to vote in the region supporting such person's candidacy. If support of ten percent of the membership was not obtained within the requisite time, and if the Nominating Committee nominated only one candidate, then the nominee of the Regional Nominating Committee would be presented to the National Nominating Committee.

If the Regional Nominating Committee nominated more than one candidate, or

⁵⁵ As stated above, revised review procedures will be set forth in a separate rule filing.

⁵⁶ See current Delegation Plan II.B.

⁵⁷ See discussion of proposed Article VIII, "District Committees and District Nominating Committees," for a description of how District Committee and District Nominating Committee members would be elected.

if a person who was not nominated obtained the necessary support, then contested nomination procedures would apply. Under these procedures, the Association would pay for two mailings of literature for each candidate, and the members of all NASD, Nasdaq, and NASD Regulation Boards, councils, and committees, and NASD, Nasdaq, and NASD Regulation staff, would be prohibited from expressing views on the nomination. However, members of the Boards, councils, and committees could express views if they made it clear they are acting in their individual capacities and disclaimed any intention to communicate in an official capacity. A ballot would be sent to Executive Representatives of the firms eligible to vote, and specified procedures, including the use of an independent agent to qualify returned ballots and count votes, then would be followed to determine the outcome of the nomination. If the National Nominating Committee or the NASD Board rejected a nominee of a Regional Nominating Committee, the Regional Nominating Committee would repeat the regional nomination procedures and submit another nominee to the National Nominating Committee.

Proposed Article VII. Officers, Agents, and Employees

Former Article IV, "Officers, Agents and Employees", is set forth as proposed Article VII. Former Sections 4.1, 4.3, 4.4, and 4.5 are renumbered, respectively, as 7.1, 7.4, 7.5, and 7.6. Changes to these sections are made only as necessary to conform to the definitions in proposed Article I and other drafting conventions. The Association proposes to add a new Section 7.2, "Absence of the President", to provide a standard operational mechanism in the event of the President's inability to act, absence, or a vacancy in the position, in conformity with proposed Article VIII, Section 2 of the NASD By-Laws. In proposed Section 7.3, "Agents and Employees", the Association proposes a conforming change to clarify supervision and control of agents and employees.⁵⁸

Proposed Article VIII. District Committees and District Nominating Committees

Proposed Article VIII, "District Committees and District Nominating Committees", is a new Article. Proposed Article VIII authorizes the Board to designate districts and sets forth

procedures for the members within each district to elect a District Committee and a District Nominating Committee. The language of proposed Article VIII is drawn from former Article VIII of the NASD By-Laws, which authorized the NASD Board to form such committees. Proposed Article VIII is drafted to conform to the Undertakings. Specifically, under Proposed Article VIII, Section 8.2, "Composition of District Committees", the role of the District Committee members is limited to serving as panelists in disciplinary proceedings in accordance with the Rule 9200 Series, recommending policy and rule changes to the NASD Regulation Board, and selecting members of the Regional Nominating Committees in a manner consistent with proposed Article VI of the NASD Regulation By-Laws.

Election procedures for District Committees and District Nominating Committees currently are set forth in corporate resolutions. The Association proposes to add these procedures, with further clarifications and detail, to the By-Laws in proposed Article VIII. The procedures conform to the nomination procedures in proposed Article VI.

Proposed Article VIII sets forth the following procedures for district elections. In May of each year, each District Nominating Committee would solicit candidates to fill the vacancies anticipated to occur on its District Committees as well as candidates to serve on the following year's District Nominating Committee. District Nominating Committee members would serve a one-year term, while District Committee members would serve a three-year term. The District Nominating Committee would receive from the Secretary of NASD Regulation a description of the firms eligible to vote in the district. Firms eligible to vote are those that either are headquartered in the district or have a branch office in the district. In making nominations, the District Nominating Committee would seek to ensure appropriate and fair representation of the classes and types of firms eligible to vote in the district. Any candidate would have to be employed by a member eligible to vote in the district.

Current corporate resolutions authorize the District Nominating Committee to nominate one candidate for each vacancy. The Association proposes to authorize the District Nominating Committee to nominate more than one candidate per vacancy. (This process would trigger contested election procedures, which would work like the contested nomination procedures described above.)

Once the District Nominating Committee selected its nominees, it would send notice of its slate to the District Committee and the Executive Representative of each firm eligible to vote. If a person employed by a member in the district was not nominated but wished to contest an election, he or she would send notice of intent to contest to the District Director or the Secretary of NASD Regulation within a specified period. Such person then would be required to submit within a specified period a written petition evidencing support for such contest by at least ten percent of the members eligible to vote in the district. If the person did not obtain ten percent support for a contest within the requisite period, or if the District Nominating Committee nominated only one candidate per vacancy, then nominees of the District Nominating Committee would be deemed elected, and the election process would be complete.

If the District Nominating Committee nominated more than one candidate per vacancy, or if a person obtained the necessary support for a contest, then contested election procedures would apply. These procedures conform to the procedures for contested regional nominations in proposed Article VI. The candidates for District Committee membership receiving the largest number of votes cast in the district for that office would be declared elected such that the number of candidates declared elected equaled the number of vacancies on the District Committee. The candidates for District Nominating Committee membership receiving the largest number of votes cast in the district for that office would be declared elected such that the number of candidates declared elected equaled the number of vacancies on the District Nominating Committee.

Proposed Article IX. Compensation

Proposed Article IX, "Compensation", is a new Article that parallels proposed Article X of the NASD By-Laws and also authorizes compensation for National Adjudicatory Council members.

Proposed Article X. Indemnification

Current Article V, Indemnification, is renumbered as proposed Article X. Sections 5.1 through 5.5 are combined, amended, and renumbered as proposed Section 10.1, and current Section 5.6 is renumbered as proposed Section 10.2. The Association proposes to make the indemnification policies for all three corporate entities essentially identical. Therefore, proposed Sections 10.1 and 10.2 conform to proposed Article VII, Sections 7.1 and 7.2 of Nasdaq By-Laws

⁵⁸ See proposed NASD By-Laws Article VIII, Section 3, and proposed Nasdaq By-Laws Article VII, Section 7.3.

and the provisions for indemnification in the NASD's Restated Certificate of Incorporation.

NASD Regulation By-Laws provide for the indemnification of, and advancement of expenses to, persons named or threatened to be named as a party to any civil, administrative, or investigative proceeding because such person is or was a Director, officer, employee, or agent of the corporation. The By-Laws also provide that: (1) The right of indemnification is not exclusive of any other right the person may have; (2) the amount of indemnification is reduced by the amount the indemnified person collects from another source; and (3) NASD Regulation has the power to purchase and maintain indemnification insurance.

The Association proposes to extend the indemnification provisions to cover National Adjudicatory Council and committee members.

The Association also proposes to modify NASD Regulation's By-Laws to make indemnification and advancement of expenses to agents discretionary with the Board, rather than mandatory, to permit the Board to determine whether indemnification is appropriate under the particular circumstances.

Indemnification of non-officer employees remains the presumption. However, the Association proposes to authorize the Board to refuse to advance expenses to an employee if: (1) The employee (i) acted in bad faith, or (ii) did not act in a manner that the employee believed to be in, or not opposed to, the best interests of NASD Regulation; (2) with respect to a criminal matter, the employee believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) the employee breached his or her duty to NASD Regulation. Finally, the Association proposes to add a provision requiring NASD Regulation, in response to a written claim for indemnification or advancement, to make such payment within 60 days of the claim.

While it is a common corporate practice to provide for discretionary indemnification of employees (as well as agents), NASD Regulation believes that it is essential that employees have confidence that they will be indemnified if they are named in any proceeding resulting from actions taken in good faith. At the same time, NASD Regulation believes it is essential that the Board have the opportunity to evaluate and deny advancement of expenses if it determines the action was not taken in good faith or if the person had reason to believe the action was illegal or breached a duty to the corporation.

Proposed Article XI. Capital Stock

Current Article VI, "Capital Stock", is renumbered as proposed Article XI. The Association proposes to add a new Section 11.1, "Sole Stockholder", recognizing the NASD's status as sole stockholder. Current Sections 6.1 through 6.7 are renumbered as proposed Section 11.2 through 11.8. The Association proposes certain changes only to conform the proposed Article to the drafting conventions and stylistic changes incorporated generally in the NASD By-Laws, the NASD Regulation By-Laws, and the Nasdaq By-Laws. There are no substantive changes to proposed Article XI. In proposed Section 11.8, the Association proposes to delete detailed provisions of Delaware law for the fixing of record dates, which are more useful to corporations with more than one stockholder, and instead provide that a record date may be fixed in accordance with Delaware law.

Proposed Article XII. Miscellaneous Provisions

Current Article VII, "Miscellaneous Provisions", is renumbered as proposed Article XII. There are no substantive changes in proposed Article XII. Current Sections 7.1, 7.2, 7.3, 7.4, and 7.5 are proposed to be renumbered, respectively, as Sections 12.1, 12.2, 12.3., 12.4, and 12.5.

Proposed Article XIII. Amendments; Emergency By-Laws

Current Article VIII, "Amendments; Emergency By-Laws", is renumbered as proposed Article XIII. There are no substantive changes in proposed Article XIII. Current Sections 8.1, 8.2, and 8.3 are proposed to be renumbered, respectively, as Sections 13.1, 13.2, and 13.3.

d. Proposed Changes to NASDAQ By-Laws: Nasdaq adopted its current By-Laws on October 27, 1993. The Association proposes to amend the Nasdaq By-Laws to conform them to changes described in the introduction to Section 3(a)(i) of this rule filing, to the proposed NASD and NASD Regulation By-Laws, where appropriate. Significant changes to Nasdaq's By-Laws are described below, including changes relating to the corporate restructuring in proposed Article IV, Sections 4.2, 4.3, 4.13, 4.14(b); and Article V. Minor, non-substantive changes and changes to reflect drafting conventions are not described.

Proposed Article I. Definitions

The Association proposes to add a new Article I, "Definitions". As noted previously, the Association proposes

that the By-Laws for each corporate entity have a free-standing set of definitions. Therefore, the Association proposes to add the following definitions, which conform to definitions proposed for inclusion in the NASD and NASD Regulation By-Laws: "Act"; "Board"; "broker"; "Commission"; "day"; "dealer"; "Delaware law"; "Delegation Plan"; "Director"; "Industry Director" or "Industry committee member"; "NASD"; "NASD Board"; "NASD Regulation"; "Nasdaq"; "Nasdaq Listing and Hearing Review Council"; "National Nominating Committee"; "Non-Industry Director" or "Non-Industry committee member"; "person associated with a member"; "Public Director" or "Public committee member"; and "Rules of the Association" or "Rules".

Proposed Article II. Offices

Current Article I, "Offices", is renumbered as proposed, and the Sections are renumbered accordingly.

Proposed Article III. Meetings of Stockholders

Current Article II, "Meetings of Stockholders", is renumbered as proposed Article III and conformed to the changes in proposed Article III of the NASD Regulation By-Laws.

Proposed Article IV. Board of Directors

Current Article III, "Board of Directors", is renumbered as proposed Article IV. The changes in proposed Article IV are designed to conform it, as appropriate, to proposed Article IV of the NASD Regulation By-Laws. Sections 3.1 through 3.4 are renumbered as Section 4.1 through 4.4. In proposed Sections 4.2 and 4.3, provisions regarding the number and qualifications of Directors are amended. Under the proposed rule change, the Nasdaq Board would be appointed by the NASD Board from among its members. The Nasdaq Board would be composed of between five and eight individuals, including the President of Nasdaq, at least one Public member, and at least one issuer representative. The number of Non-Industry Directors would be equal to or greater than the combined total of Industry Directors and the President of Nasdaq.

Like the NASD Regulation Board, members of the Nasdaq Board generally would be appointed for three one-year terms that coincided with their terms on the NASD Board. However, the NASD Board would retain flexibility in this regard and could appoint individuals to serve where they are best qualified to serve. Thus, as described above in the

corresponding section of the NASD Regulation By-Laws, current Section 3.5, "Term", is deleted and the remaining sections are renumbered accordingly.

Proposed Section 4.14(a), "Conflicts of Interest; Contracts and Transactions Involving Directors", is identical to the corresponding provision in the NASD Regulation By-Laws, except that there is no cross-reference to the Rules of the Association because the Association does not have a specific disqualification standard for Nasdaq proceedings as it has in the Rule 9160 Series for NASD Regulation disciplinary proceedings. Finally, proposed Section 4.16, "Communication of Views Regarding NASD or NASD Regulation Elections or Nomination", is a new section that holds Nasdaq, Nasdaq's Board and its committees, the Nasdaq Listing and Hearing Review Council, and Nasdaq staff to the same standards proposed for NASD and NASD Regulation with respect to contested elections or nominations.⁵⁹

Proposed Article V. Nasdaq Listing and Hearing Review Council

Proposed Article V, "Nasdaq Listing and Hearing Review Council", is a new article that requires the Nasdaq Board to appoint a Listing Council. The responsibilities of the Nasdaq Listing and Hearing Review Committee are transferred to the Listing Council, and the provision of the Delegation Plan authorizing the appointment of the Committee is deleted. Proposed Section 5.1, "Appointment and Authority", sets forth the responsibilities of the Listing Council. The Listing Council generally would operate much as the Nasdaq Listing and Hearing Review Committee currently operates under the Delegation Plan.⁶⁰ As is the case with the current Nasdaq Listing and Hearing Review Committee, the Listing Council would be authorized to make recommendations to the Nasdaq Board on listing-related rule amendments.

Under proposed Section 5.2, "Number of Members and Qualifications", the Listing Council would be composed of at least eight and not more than 11 members, of which no more than 50 percent could be directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenue. The Listing Council also would include at least

three Non-Industry members, and a quorum for the transaction of business at Listing Council meetings would include at least one of the Non-Industry members. Under proposed Sections 5.3, "Nomination Process", and 5.4, "Term of Office", the members of the Listing Council would be nominated by the National Nominating Committee and appointed by the Nasdaq Board and serve for a term of two years. Sections 5.5 through 5.10 mirror the administrative provisions for the National Adjudicatory Council in proposed Article VI, Sections 5.5 through 5.10 of the NASD Regulation By-Laws.

Proposed Article VI. Compensation

Proposed Article VI, "Compensation", is a new Article that conforms with proposed Article X of the NASD By-Laws and proposed Article IX of the NASD Regulation By-Laws. Proposed Article VI also authorizes compensation of Listing Council members.

Proposed Article VII. Officers, Agents and Employees

Current Article IV, "Officers, Agents and Employees", is renumbered as proposed Article VII, and the Sections are renumbered accordingly. Only one substantive change is proposed to Article VII. Proposed Section 7.3 (current Section 4.3), "Subordinate Officers, Agents, or Employees", includes a provision that clarifies that agents and employees of Nasdaq are under the supervision and control of the officers of Nasdaq, unless the Nasdaq Board, by resolution, provides that an agent or employee shall be under its supervision and control.⁶¹

Proposed Article VIII. Indemnification

Current Article V, "Indemnification", is renumbered as proposed Article VIII, and the Sections are renumbered accordingly. Proposed Article VIII conforms to the provisions for indemnification in the NASD's Restated Certificate of Incorporation and proposed Article X of the NASD Regulation By-Laws. As noted above, the Association proposes to make the indemnification policies for all three corporate entities identical. Proposed Section 8.1, "Nasdaq Listing and Hearing Review Council and Committee Members", also provides for indemnification of Listing Council and committee members.

Proposed Article IX. Capital Stock

Current Article VI, "Capital Stock", is renumbered as proposed Article IX. The Association proposes changes to conform to those set forth for proposed Article XI of the NASD Regulation By-Laws.

Proposed Article X. Miscellaneous Provisions

Current Article VII, "Miscellaneous Provisions", is renumbered as proposed Article X, and the sections are renumbered accordingly. There are no substantive changes.

Proposed Article XI. Amendments; Emergency By-Laws

Current Article VIII, "Amendments; Emergency By-Laws", is renumbered as proposed Article XI, and the sections are renumbered accordingly. There are no substantive changes.

e. Proposed Changes to the Delegation Plan and Restated Certificates of Incorporation. The Association proposes to amend the Delegation Plan to delete provisions added to the By-Laws of the NASD, NASD Regulation, and Nasdaq.⁶² Specifically, in Section I.A., the definitions of "Industry", "Non-Industry", and "Public" Governors, Directors, and committee members are deleted and instead the Section cross-references the By-Laws of the NASD, NASD Regulation, and Nasdaq, where the Association proposes to define such terms.⁶³

The Association proposes to add a new Section I.B.11. to the Delegation Plan, authorizing the NASD Board to take action *ab initio*; either the full NASD Board or the NASD Executive Committee could exercise this authority.⁶⁴ This authority typically would be exercised in two circumstances. First, when an issue was ripe for consideration at a regularly scheduled meeting of a subsidiary board but clearly warranted consideration by the NASD Board, separate consideration by the subsidiary board could be avoided without any loss of subsidiary board input because the subsidiary board members constitute a subset of the NASD Board. This option is not available under the current corporate structure, which invariably requires that matters within a subsidiary's sphere of delegated authority be considered by

⁶² All references to Sections in this section "d" refer to the Delegation Plan, unless otherwise noted.

⁶³ See proposed Article I of the NASD By-Laws; proposed Article I of the NASD Regulation By-Laws; proposed Article I of the Nasdaq By-Laws.

⁶⁴ This proposed rule change is a result of the corporate restructuring and was not proposed in SR-NASD-97-28.

⁵⁹ See proposed Article VII, Sections 11 and 12 of the NASD By-Laws and proposed Article IV, Section 4.16 of the NASD Regulation By-Laws.

⁶⁰ Procedures for NASD Board review of Listing Council decisions will be proposed in a separate rule filing.

⁶¹ See proposed Article VIII, Section 3 of the NASD By-Laws and proposed Article VII, Section 7.3 of the NASD Regulation By-Laws.

that subsidiary's board before consideration by the NASD Board.

Second, should a time-sensitive issue arise between regularly scheduled board meetings, the issue could be resolved by the NASD Executive Committee in a single step. At present, the subsidiaries' executive committees are authorized to take initial action on such matters, but such action cannot be implemented without the unanimous written consent of the NASD Board. Obtaining such unanimous written consent can impede the Association's ability to respond to urgent matters. This time-consuming step is avoided through the creation of an NASD Executive Committee that could convene telephonically on an as-needed basis to address time-sensitive matters.

The Association further proposes to delete Sections I.C., I.D., II.B., II.D., III.B., and part of III.D., which address the composition of the Boards, elections, terms of office, vacancies, disqualification due to change in classification, and the composition and authority of certain committees because the Association proposes to include revised provisions in the appropriate By-Laws.⁶⁵ With respect to committees, the Association proposes to include in the appropriate By-Laws or in the Delegation Plan the compositional requirements for specified committees as provided in the Undertakings. If the committee consists solely of Directors or Governors, the Association proposes to include provisions describing the committee's powers and compositional requirements in the appropriate corporate By-Laws. If the committee consists of Directors or Governors as well as other members, the Association proposes to include provisions describing the committee's powers and compositional requirements in the Delegation Plan. Thus, the Association proposes to add provisions regarding the powers and composition of the Market Regulation Committee and the National Arbitration and Mediation Committee as proposed Section II.C. of the Delegation Plan.

The Association proposes to amend Section II.A.1.f. to specify that NASD Regulation will establish procedures to consider requests by members, associated persons, and members of the public that NASD Regulation initiate formal disciplinary action. This provision was discussed in SR-NASD-

97-28 in connection with the discussion of the deletion of former Rule 8120.

The Association proposes to amend Section II.C., which sets forth certain NASD Regulation Board review procedures, by deleting specific procedures that are now set forth in the Rule 9000 Series.

The Association also proposes to clarify that both NASD Regulation and Nasdaq are responsible for operating Stockwatch. Therefore, new Sections II.A.1.s. and III.A.1.o. are added, and the section pertaining to Stockwatch is renumbered as Section IV of the Delegation Plan.

With respect to committee procedures, the Association proposes to require that a quorum for the transaction of business by the Quality of Markets Committee, the National Arbitration and Mediation Committee, and the Market Regulation Committee consist of a majority of such committee, including not less than 50 percent of its Non-Industry committee members. However, if at least 50 percent of the Non-Industry committee members are present at or have filed a waiver of attendance for a meeting *after receiving an agenda prior to such meeting*, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum would be waived. The Association believes a waiver is appropriate because these committees generally act only in an advisory capacity.

Finally, the Association proposes to add a new petition for reconsideration procedure to the Delegation Plan.⁶⁶ Under the proposed rule change, if the NASD Regulation or NASD Board took action on a rule change relating to the business and sales practices that was materially inconsistent with the recommendation of the National Adjudicatory Council, the NASD Regulation or NASD Board would be required to notify the National Adjudicatory Council within one calendar day. After receipt of such notice, the National Adjudicatory Council would be allowed two calendar days in which to determine, by majority vote, whether to petition the NASD Board for reconsideration. The petition would have to be submitted in writing and accompanied by a written statement explaining in detail why the National Adjudicatory Council believed that the NASD Regulation or NASD Board's action should be set aside. Upon receipt of a timely petition for reconsideration and accompanying statement, the NASD

Executive Committee would have three calendar days in which to convene and take action on the petition. If the NASD Executive Committee granted reconsideration, the matter would be added to the agenda of the next regularly scheduled meeting of the NASD Board. If the Executive Committee denied reconsideration, the NASD Regulation or NASD Board's previous action on the rule would be final, and the necessary rule filings would be made with the SEC. The same procedures would apply if the Nasdaq or NASD Board took action on a listing-related rule change that was materially inconsistent with the recommendation of the Listing Council.

With respect to the certificates of incorporation, the Association proposes to amend Article Eighth of the NASD Restated Certificate of Incorporation to conform it to the structural changes to the NASD Board previously described. Only conforming changes are proposed to the NASD Regulation and Nasdaq Certificates of Incorporation.

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(4) of the Act in that it assures a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representatives of issuers and investors and not be associated with a member of the association, a broker, or a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe 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

The NASD has neither solicited nor received written comments.

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

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

⁶⁵ See proposed Article VII, Sections 4, 5, 6, 7, 9, and 10 of the NASD By-Laws; proposed Article IV, Sections 4.2, 4.3, 4.4, 4.7, 4.8 and 4.13 of the NASD Regulation By-Laws; proposed Article IV, Sections 4.2., 4.3, 4.4, 4.7, 4.8 and 4.13 of the Nasdaq By-Laws.

⁶⁶ See proposed II.B.2. and III.B.3. This proposed rule change is a result of the corporate restructuring and was not proposed in SR-NASD-97-28.

(A) By order approve the 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. In addition to the general comments concerning the Association's proposal, the Commission requests particular comments addressing whether the proposal would result in any burdens on competition and whether the proposal would promote efficiency, competition and capital formation. The Commission also seeks comment on whether the proposal, given the unique nature of the Association as a self-regulatory organization, adequately promotes the goals of 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. File Number SR-NASD-97-71 should be included on the subject line if E-mail is used to submit a comment letter. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

All submissions should refer to File No. SR-NASD-97-71 and should be submitted by October 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶⁷

Margaret H. McFarland,
Deputy Secretary.

Attachment A

Additions are *italicized*;
Deletions are [bracketed].

The By-Laws of the NASD, NASD Regulation and Nasdaq are compared to the versions temporarily approved in SR-NASD-96-20, Amendment No. 5; Securities Exchange Act Release No. 34-38644 (May 15, 1997), 62 FR 43571, (May 22, 1997).

The Delegation Plan is compared to the version temporarily approved in SR-NASD-96-29, Amendment No. 5; Securities Exchange Act Release No. 38909 (August 7, 1997), 62 FR 43571 (August 14, 1997).

The Revised Certificates of Incorporation of the NASD, NASD Regulation and Nasdaq are compared to those filed with the Secretary of State for the State of Delaware on September 11, 1996, January 25, 1996 and December 21, 1993, respectively.

* * * * *

By-Laws of the National Association of Securities Dealers, Inc.

Article I

Definitions

When used in these By-Laws, [and any rules of the Corporation,] unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "bank" means (1) a banking institution organized under the laws of the United States, (2) a member bank of the Federal Reserve System, (3) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. § 92a), and which is supervised and examined by a State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Act, and (4) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (1), (2), or (3) of this subsection;

(c) "Board" means the Board of Governors of the [Corporation.] NASD;

[(d) "Boards" means the Board of Governors of the Corporation and the Boards of Directors of The Nasdaq Stock Market, Inc. and NASD Regulation, Inc.;]

[(e)](d) "branch office" means an office defined as a branch office in [NASD Rule 3010] *the Rules of the Association*;

[(f)](e) "broker" means any individual, corporation, partnership,

association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

[(g)](f) "Commission" means the Securities and Exchange Commission;

[(h) "Corporation" means the National Association of Securities Dealers, Inc.;]

[(i) "Corporations" means the

National Association of Securities Dealers, Inc. ("NASD"), and its subsidiaries, The Nasdaq Stock Market, Inc. ("Nasdaq") and NASD Regulation, Inc. ("NASD Regulation");]

(g) "day" means calendar day;

[(j)](h) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for [his] *such individual's or entity's own* account, through a broker or otherwise, but does not include a bank, or any person insofar as [he] *such person* buys or sells securities for [his] *such person's* own account, either individually or in some fiduciary capacity, but not as part of a regular business;

[(k) "delegation" (i) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(j) "district" means a district established by the NASD Regulation Board pursuant to the NASD Regulation By-Laws;

[(l)](k) "government securities broker" shall have the same meaning as in Section 3(a)(43) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(m)](l) "government securities dealer" shall have the same meaning as in Section 3(a)(44) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(n)](m) "Governor" means a member of the Board[.];

(n) "Industry Director" means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents) who: (1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3)

⁶⁷ 17 CFR 200.30-3(a)(12).

owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(o) "Industry Governor" or "Industry committee member" means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq) or committee member who: (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides

professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

[(o)](p) "investment banking or securities business" means the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others;

[(p)](q) "member" means any broker or dealer admitted to membership in the [Corporation] NASD;

[(q)](r) "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond as defined by Section 3(a)(29) of the Act;

[(r)](s) "municipal securities broker" means a broker, except a bank or department or division of a bank, engaged in the business of effecting transactions in municipal securities for the account of others;

[(s)](t) "municipal securities dealer" means any person, except a bank or department or division of a bank, engaged in the business of buying and selling municipal securities for [his] such person's own account, through a broker or otherwise, but does not include any person insofar as [he] such person buys or sells securities for [his] such person's own account either individually or in some fiduciary capacity, but not as a part of a regular business;

(u) "NASD" means the National Association of Securities Dealers, Inc.;

(v) "Nasdaq" means The Nasdaq Stock Market, Inc.;

(w) "Nasdaq Board" means the Board of Directors of Nasdaq;

(x) "Nasdaq Listing and Hearing Review Council" means a body appointed pursuant to Article V of the Nasdaq By-Laws;

(y) "NASD Regulation" means NASD Regulation, Inc.;

(z) "NASD Regulation Board" means the Board of Directors of NASD Regulation;

(aa) "National Adjudicatory Council" means a body appointed pursuant to Article V of the NASD Regulation By-Laws;

(bb) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of these By-Laws;

(cc) "Non-Industry Director" means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents of NASD Regulation and Nasdaq) who is: (1) A Public Director; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director;

(dd) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq) or committee member who is: (1) A Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member;

[(t)](ee) "person associated with a member" or "associated person of a member" means: (1) [Every] a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of [any] a member, or [any] a natural person occupying a similar status or performing similar functions, or [any] a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by [such] a member, whether or not any such person is registered or exempt from registration with the [Corporation] NASD [pursuant to] under these By-Laws or the Rules of the Association;

(ff) "Public Director" means a Director of the NASD Regulation Board or Nasdaq Board who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

(gg) "Public Governor" or "Public committee member" means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

[(u)](hh) "registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer" means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act; and

[(v) "rules of the Corporation" means all rules of the Corporation (which rules may be referred to as "NASD Rules"), Certificate of Incorporation, By-Laws, Rules of the Association, any other rules, and any interpretations thereunder.]

(ii) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board pursuant to these By-Laws, as hereafter amended or supplemented.

Article II

Offices

Location

Sec. 1. The address of the registered office of the NASD in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The NASD also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the NASD may require.

Change of Location

Sec. 2. In the manner permitted by law, the Board or the registered agent may change the address of the NASD's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

Article [II] III

Qualifications of Members and Associated Persons

Persons Eligible to [become] Become Members and Associated Persons of Members

Sec. 1. (a) Any registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States,

under the laws of the United States, shall be eligible for membership in the [Corporation] NASD, except such registered brokers, dealers, or municipal securities brokers or dealers, or government securities brokers or dealers which are excluded under the provisions of [Sections 3 (a) or (b) of this Article] Section 3.

(b) Any person shall be eligible to become an associated person of a member, except such persons who are excluded under the provisions of Section 3[(b) of this Article].

Authority of Board to Adopt Qualification Requirements

Sec. 2. (a) The Board [of Governors] shall have authority to adopt rules and regulations applicable to applicants for membership, members, and persons associated with applicants or members establishing specified and appropriate standards with respect to the training, experience, competence, and such other qualifications as the Board [of Governors] finds necessary or desirable, and in the case of an applicant for membership or a member, standards of financial responsibility and operational capability.

(b) In establishing and applying such standards, the Board [of Governors] may classify members and persons associated with such members, taking into account relevant matters, including the nature, extent, and type of business being conducted and of securities sold, dealt in, or otherwise handled. The Board [of Governors] may specify that all or any portion of such standards shall be applicable to any such class and may require the persons in any such class to be registered with the [Corporation] NASD.

(c) The Board [of Governors] may from time to time make changes in such rules, regulations, and standards as it deems necessary or appropriate.

Ineligibility of Certain Persons for Membership or Association

Sec. 3. (a) No registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member fails or ceases to satisfy the qualification requirements established under Section 2 [of this Article], if applicable, or if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member is or becomes subject to a disqualification under Section 4 [of this Article], or if

such member fails to comply with the requirement that all forms filed pursuant to these By-Laws be filed via electronic process or such other process as the [Corporation] NASD may prescribe.

(b) No person shall become associated with a member, continue to be associated with a member, or transfer association to another member, if such person fails or ceases to satisfy the qualification requirements established under Section 2 [of this Article], if applicable, or if such person is or becomes subject to a disqualification under Section 4 [of this Article]; and no broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if any person associated with it is ineligible to be an associated person under this subsection.

(c) If it deems appropriate, the Board [of Governors], upon notice and opportunity for a hearing, may cancel the membership of a member if it becomes ineligible for continuance in membership under subsection (a) [hereof], may suspend or bar a person [for] from continuing to be associated with any member if such person is or becomes ineligible for association under subsection (b) [hereof], and may cancel the membership of any member who continues to be associated with any such ineligible person.

(d) Any [broker, dealer, municipal securities dealer, or government securities broker or dealer which is ineligible for admission into membership, or any member which] member that is ineligible for continuance in membership[,] may file with the Board [of Governors] an application requesting relief from the ineligibility pursuant to [procedures adopted by the Board of Governors and contained in the Corporation's Procedural Rules. The Board of Governors] the Rules of the Association. A member may file such application on its own behalf and on behalf of a current or prospective associated person. The Board may, in its discretion, approve the [admission] continuance in membership, and may also approve the association or continuance of [an applicant or member, or the] association of any person, if the Board determines that such approval is consistent with the public interest and the protection of investors. Any approval hereunder may be granted unconditionally or on such terms and conditions as the Board considers necessary or appropriate. In the exercise of the authority granted hereunder, the Board [of Governors]

may: (1) Conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification, may include the proposed or present business of [an applicant for membership or of] a member and the conditions of association of any *current or prospective associated person* [prospective or presently associated person, among other matters; (2) permit, in limited types of situations, a membership or association with a member pending completion of its inquiry or investigation, and its final determination, based upon a consideration of relevant factors, and may classify situations taking into account the status of brokers, dealers, municipal securities brokers and dealers and government securities brokers and dealers as applicants or existing members and of persons as prospective or presently associated persons of members; the type of disqualification or failure to qualify; whether a member or associated person has been the subject of a previous approval and the terms and conditions thereof; and any other relevant factors; and (3) delegate any of its functions and authority under this subsection (d) to appropriate committees of the Corporation or to Corporation staff members].

(e) An application filed under subsection (d) [hereof] shall not foreclose any action which the Board [of Governors] is authorized to take under subsection (c) [hereof] until approval has been granted.

(f) Approval by the Board [of Governors] of an application made under subsection (d) shall be subject to whatever further action the Commission may take pursuant to authority granted to the Commission under the Act.

(g) *The Board may delegate its authority under this Section in a manner not inconsistent with the Delegation Plan.*

Definition of Disqualification

Sec. 4. A person is subject to a "disqualification" with respect to membership, or association with a member, if such person:

(a) Has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to Section 5 of the

Commodity Exchange Act, or foreign equivalent of a contract market designated pursuant to any substantially equivalent foreign statute or regulation, or futures association registered under Section 17 of the Commodity Exchange Act or a foreign equivalent of a futures association designated pursuant to any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(b) Is subject to—

(1) An order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority:

(i) Denying, suspending for a period not exceeding 12 months, or revoking [his] *such person's* registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or limiting [his] *such person's* activities as a foreign person performing a function substantially equivalent to any of the above; or

(ii) Barring or suspending for a period not exceeding 12 months [his] *such person from* being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;

(2) An order of the Commodity Futures Trading Commission denying, suspending, or revoking [his] *such person's* registration under the Commodity Exchange Act (7 U.S.C. § 1 et seq.); or

(3) An order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(c) By [his] *such person's* conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in [subsections] *subsection* (a) or (b) of this Section;

(d) By [his] *such person's* conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an

entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subsection (a) or (b) of this Section;

(e) Has associated with him or her any person who is known, or in the exercise of reasonable care should be known, to him or her to be a person described in [subsections] *subsection* (a), (b), (c), or (d) of this Section;

(f) Has willfully made or caused to be made in any application for membership in a self-regulatory organization, or to become associated with a member of a self-regulatory organization, or in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

(g)(1) Has been convicted within ten years preceding the filing of any application for membership in the [Corporation] *NASD*, or to become associated with a member of the [Corporation] *NASD*, or at any time thereafter, of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which:

(i) Involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) Arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the above, or any entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation;

(iii) Involves the larceny, theft, robbery, extortion, forgery,

counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) Involves the violation of Sections 152, 1341, 1342, or 1343 or Chapters 25 or 47 of Title 18, United States Code, or a violation of a substantially equivalent foreign statute;

(2) Has been convicted within ten years preceding the filing of any application for membership in the [Corporation] NASD, or to become associated with a member of the [Corporation] NASD, or at any time thereafter of any other felony;

(h) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, *or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation*, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

(i) Has been found by a foreign financial regulatory authority to have—

(1) Made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(2) Violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

(3) Aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to [his] *such person's* supervision.

Article [III] IV

Membership

Application for Membership

Sec. 1. (a) Application for membership in the [Corporation] NASD, properly signed by the applicant, shall be made to the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe, on the form to be prescribed by the [Corporation] NASD, and shall contain:

(1) An [acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions, and covenants of the Restated Certificate of Incorporation, the By-Laws] *agreement to comply with the federal securities laws, the rules and regulations [of the Corporation as they are or may from time to time be adopted, changed or amended,] thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and Nasdaq, the Rules of the Association, and all rulings, orders, directions, and decisions [of,] issued and sanctions imposed [by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act] under the Rules of the Association;*

(2) An agreement to pay such dues, assessments, and other charges in the manner and amount as [shall from time to time be fixed by the Board of Governors pursuant to these By-Laws] *from time to time shall be fixed*

pursuant to the NASD By-Laws, Schedules to the NASD By-Laws, and the Rules of the Association; and

[(3) An agreement that none of the Corporations, or any officer, employee, or member of the Board or committees of the Corporations, shall be liable, except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer or member of the Boards or of any committee, in his official capacity, or by any employee of the Corporations while acting within the scope of his employment or under instruction of any officer, Board, or committee of the Corporations, in connection with the administration or enforcement of any of the provisions of the rules of the Corporation as they are or may from time to time be adopted, or amended, any ruling, order, directive, decision of, or penalty imposed by, the Boards or any duly authorized committee thereof, or the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board and the Treasury Department; and]

[(4)] (3) Such other reasonable information with respect to the applicant as the [Corporation] NASD may require.

(b) Any application for membership received by the [Corporation] NASD shall be processed in the manner set forth in the [Procedural] Rules of the [Corporation] Association.

(c) Each *applicant and member* shall ensure that its membership application with the [Corporation] NASD is kept current at all times by supplementary amendments via electronic process or such other process as the [Corporation] NASD may prescribe to the original application. Such amendments to the application shall be filed with the [Corporation] NASD not later than [thirty (30) calendar] 30 days after learning of the facts or circumstances giving rise to the amendment.

Similarity of Membership Names

Sec. 2. (a) No person or firm shall be admitted to or continued in membership in the [Corporation] NASD having a name [which] *that* is identical to the name of another member appearing on the membership roll of the [Corporation] NASD or a name so similar to any such name as to tend to confuse or mislead.

(b) No member may change its name without prior approval of the [Corporation] NASD.

Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the [Corporation] NASD one "executive representative" who shall represent, vote, and act for the member in all the affairs of the [Corporation] NASD, except that other executives of a member may also hold office in the [Corporation] NASD, serve on the Board [of Governors] or committees [of the Corporation] *appointed under Article IX, Section 1* or otherwise take part in the affairs of the [Corporation] NASD. A member may change its executive representative upon giving notice thereof via electronic process or such other process as the [Corporation] NASD may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member.

Membership Roll

Sec. 4. The Secretary of the [Corporation] NASD shall keep a currently accurate and complete membership roll, containing the name and address of each member, and the name and address of the executive representative of each member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of the [Corporation] NASD shall at all times be available to all members of the [Corporation] NASD, to all governmental authorities, and to the general public.

Resignation of Members

Sec. 5. Membership in the [Association] NASD may be voluntarily terminated only by formal resignation. Resignations of members must be filed via electronic process or such other process as the [Corporation] NASD may prescribe and addressed to the [Corporation] NASD. Any member may resign from the [Corporation] NASD at any time. Such resignation shall not take effect until [thirty (30) calendar] 30 days after receipt thereof by the [Corporation] NASD and until all indebtedness due the [Corporation] NASD from such member shall have been paid in full and so long as any complaint or action is pending against the member under the [Procedural] *Rules of the Association*. The [Corporation] NASD, however, may in

its discretion declare a resignation effective at any time.

Retention of Jurisdiction

Sec. 6. A resigned member or a member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the [Procedural] *Rules of the Association* based upon conduct which commenced prior to the effective date of the member's resignation from the [Corporation] NASD or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two [(2)] years after the effective date of resignation, cancellation, or revocation.

Transfer and Termination of Membership

Sec. 7. (a) Except as provided hereinafter, no member of the [Corporation] NASD may transfer its membership or any right arising therefrom and the membership of a corporation, partnership, or any other business organization which is a member of the [Corporation] NASD shall terminate upon its liquidation, dissolution, or winding up, and the membership of a sole proprietor which is a member shall terminate at death, provided that all obligations of membership under the By-Laws and the [other rules] *Rules of the [Corporation] Association* have been fulfilled.

(b) The consolidation, reorganization, merger, change of name, or similar change in any corporate member shall not terminate the membership of such corporate member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the corporate member, and the member or the surviving organization shall continue in the investment banking and securities business, and shall possess the qualifications for membership in the [Corporation] NASD. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member shall not terminate the membership of such partnership member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the partnership member, and the member or surviving organization shall continue in the investment banking and securities business and shall possess the qualifications for membership in the [Corporation] NASD. If the business of any predecessor member is to be carried on by an organization deemed to be a successor organization by the

[Corporation] NASD, the membership of such predecessor member shall be extended to the successor organization *subject to the notice and application requirements of the Rules of the Association and the right of the NASD to place restrictions on the successor organization pursuant to the Rules of the Association*; otherwise, any surviving organization shall be required to satisfy all of the *membership application* requirements of [the] *these By-Laws and the Rules of the Association*.

Registration of Branch Offices

Sec. 8. (a) Each branch office of a member of the [Corporation] NASD shall be registered with and listed upon the membership roll of the [Corporation] NASD, and shall pay such dues, assessments, and other charges as shall be fixed from time to time by the Board [of Governors] pursuant to Article [V of the By-Laws] VI.

(b) Each member of the [Corporation] NASD shall promptly advise the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member not later than [thirty (30) calendar] 30 days after the effective date of such change.

Article [IV] V

Registered Representatives and Associated Persons

Qualification Requirements

Sec. 1. No member shall permit any person associated with [such] *the* member to engage in the investment banking or securities business unless the member determines that such person [has complied with the applicable provisions under Article II of the By-Laws] *satisfies the qualification requirements established under Article III, Section 2 and is not subject to a disqualification under Article III, Section 4*.

Application for Registration

Sec. 2. (a) Application by any person for registration with the [Corporation] NASD, properly signed by the applicant, shall be made to the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe, on the form to be prescribed by the [Corporation] NASD and shall contain:

(1) [An acceptance of and] An agreement to comply with the [all the provisions of the rules of the Corporation as they are or may from

time to time be adopted or amended,] *federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and Nasdaq, the Rules of the Association, and all rulings, orders, directions, and decisions [of, and penalties imposed by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;] issued and sanctions imposed under the Rules of the Association; and*

[(2) An agreement that none of the Corporations, or any officer, employee, or member of the Boards or committees of the Corporation, shall be liable except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer, member of the Boards or of any committee in his official capacity, or by any employee of the Corporation while acting within the scope of his employment, or under instruction of any officer, Board, or committee of the Corporations, in connection with the administration or enforcement of any of the provisions of the By-Laws, any rules of the Corporation as they are or may from time to time be adopted or amended, any ruling, order, direction, decision of, or penalty imposed by the Boards or any duly authorized committee thereof, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder including the rules of the Municipal Securities Rulemaking Board and the rules of the Treasury Department; and]

[(3)] (2) Such other reasonable information with respect to the applicant as the [Corporation] NASD may require.

(b) The [Corporation] NASD shall not approve an application for registration of any person who is not eligible to be an associated person of a member under the provisions of *Article III*, Section 3[(b) of Article II of these By-Laws].

(c) Every application for registration filed with the [Corporation] NASD shall be kept current at all times by supplementary amendments via electronic process or such other process as the [Corporation] NASD may prescribe to the original application. Such amendment to the application

shall be filed with the [Corporation] NASD not later than [thirty (30) calendar] 30 days [of] after learning of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than ten [(10) calendar] days after such disqualification occurs.

Notification by Member to [Corporation] the NASD and Associated Person of Termination; Amendments to Notification

Sec. 3. (a) Following the termination of the association with a member of a person who is registered with it, such member shall, not later than [thirty (30) calendar] 30 days after such termination, give notice of the termination of such association to the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe on a form designated by the [Corporation] NASD, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the [Corporation] NASD. A member [which] that does not submit such notification[,] and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed a late filing fee as specified by the [Corporation] NASD. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action under the [rules] Rules of the [Corporation] Association is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually under the [rules] Rules of the [Corporation. The Corporation] Association. The NASD, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe by means of an amendment to the notice filed pursuant to subsection [paragraph] (a) [above] in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe and a copy provided to the person whose association with the member has been terminated not later than [thirty (30)

calendar] 30 days after the member learns of the facts or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the [Corporation] NASD or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the [rules] Rules of the [Corporation] Association based upon conduct which commenced prior to the termination [or], revocation, or cancellation or upon such person's failure, while subject to the [Corporation's] NASD's jurisdiction as provided herein, to provide information requested by the [Corporation] NASD pursuant to [NASD Rule 8210] the Rules of the Association, but any such complaint shall be filed within:

(a) Two [(2)] years after the effective date of termination of registration pursuant to Section 3 [above], provided, however that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this [paragraph] subsection;

(b) Two [(2)] years after the effective date of revocation or cancellation of registration pursuant to [NASD Rule 8320] the Rules of the Association; or

(c) in the case of an unregistered person, within two [(2)] years after the date upon which such person ceased to be associated with the member.

Article [V] VI

Dues, Assessments, and Other Charges

Power of [Corporation] the NASD to Fix and Levy Assessments

Sec. 1. The [Corporation] NASD shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the [Corporation] NASD each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by members of the [Corporation] NASD and issuers and any other persons using any facility or system which the [Corporation] NASD, NASD Regulation, or Nasdaq operates or controls. Fees, dues, assessments, and other charges shall be called and payable as determined by the [Corporation] NASD

from time to time; provided, however, that such admission fees, dues, assessments, and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the [Corporation] NASD operates or controls. The [Corporation] NASD may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the [Corporation] NASD may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Reports of Members

Sec. 2. Each member, issuer, or other person shall promptly furnish all information or reports requested by the [Corporation] NASD in connection with the determination of the amount of admission fees, dues, assessments, or other charges.

Suspension or Cancellation of Membership or Registration

Sec. 3. The [Corporation] NASD after [fifteen (15)] 15 days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments, or other charges or for failure to furnish any information or reports requested pursuant to Section 2 [of this Article], or for failure to comply with an award of arbitrators properly rendered pursuant to [Section 41] the Rules of the [Code of Arbitration Procedure] Association, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the [procedures specified by the Corporation] Rules of the Association.

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the [Corporation] NASD upon such terms and conditions as it shall deem

just; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the [Corporation] NASD.

Delegation

Sec. 5. The NASD may delegate its authority under this Article in a manner not inconsistent with the Delegation Plan.

Article [VI] VII

Board of Governors

Powers and Authority of Board

Sec. 1. (a) The Board [of Governors] shall be the governing body of the [Corporation] NASD and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the [Corporation] NASD and the promotion of the [Corporation's] NASD's welfare, objects, and purposes. In the exercise of such powers, the Board [of Governors] shall have the authority to:

[(1)](i) Adopt for submission to the membership, as hereinafter provided, such By-Laws and changes or additions thereto as it deems necessary or appropriate;

[(2)](ii) Adopt such other [rules] Rules of the [Corporation] Association and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change, or addition to such [rules] Rules;

[(3)](iii) make such regulations, issue such orders, resolutions, exemptions, interpretations, including interpretations of these By-Laws and the [rules] Rules of the [Corporation] Association, and directions, and make such decisions as it deems necessary or appropriate;

[(4)](iv) Prescribe [a code of arbitration procedure providing] rules for the required or voluntary arbitration of controversies between members and between members and customers or others as it shall deem necessary or appropriate;

[(5)](v) Establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof;

[(6)](vi) Require all over-the-counter transactions in securities between members, other than transactions in exempted securities as defined in Section 3(a)(12) of the Act, to be cleared

and settled through the facilities of a clearing agency registered with the Commission pursuant to the Act, which clears and settles such over-the-counter transactions in securities;

[(7)](vii) Organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the [Corporation] NASD or by one or more independent firms under contract with the [Corporation] NASD as the Board [of Governors] may deem necessary or appropriate. The Board [of Governors] may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others;

[(8)](viii) Require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered by the [Corporation] NASD, a division or subsidiary thereof, or a clearing agency registered under the Act; and

[(9)](ix) Engage in any activities or conduct necessary or appropriate to carry out the [Corporation's] NASD's purposes under its Restated Certificate of Incorporation and the federal securities laws.

(b) In the event of the refusal, failure, neglect, or inability of any [member of the Board of Governors] Governor to discharge [his] such Governor's duties, or for any cause affecting the best interests of the [Corporation] NASD the sufficiency of which the Board [of Governors] shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such [member] Governor and declare [his] such Governor's position vacant and that such position shall be filled in accordance with the provisions of Section [6] 7 [of this Article].

(c) To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation [and applicable law, the Corporation], and these By-Laws, the NASD may delegate any power of the [Corporation or the Board of Governors] to any person or entity, including a subsidiary of the Corporation; provided that such delegation is] NASD or the Board to a committee appointed pursuant to Article IX, Section 1, the

NASD Regulation Board, the Nasdaq Board, or NASD staff in a manner not inconsistent with the Delegation Plan.

Authority to Cancel or Suspend for Failure to Submit Required Information

Sec. 2. (a) The Board [of Governors] shall have authority, upon notice and opportunity for a hearing, to cancel or suspend the membership of any member or suspend the association of any person associated with a member for failure to file, or to submit on request, any report, document, or other information required to be filed with or requested by the [Corporation] *NASD pursuant to these By-Laws or the Rules of the Association.*

(b) *Any membership or association suspended or canceled pursuant to this Section may be reinstated by the NASD pursuant to the Rules of the Association.*

[(b)] (c) The Board [of Governors] is authorized to delegate [the authority hereinabove granted to the Chief Executive Officer of the Corporation; provided, however, that the Executive Committee of the Board of Governors shall be notified in writing of any such contemplated action by the Chief Executive Officer] *its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the Association.*

Authority to Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. The Board [of Governors], or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding[;]:

[(1)] (a) The trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the [Corporations] *NASD, NASD Regulation, or Nasdaq,* and the participation in any such system of any or all persons or the trading therein of any or all securities; and

[(2)] (b) The operation of any or all member firms' offices or systems, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

Composition and Qualifications of the Board

Sec. 4. (a) [The Board of Governors shall be composed of five or more members, the number thereof to be determined from time to time by the

Board of Governors, and shall include at all times the Chief Executive Officer and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Governors, both of which determinations shall be consistent with the Delegation Plan and Section 15A(b)(4) of the Act. The criteria for the categories of Industry, Non-Industry and Public Governors, as used herein, shall be established by the Board of Governors from time to time, which criteria shall be consistent with the Delegation Plan.] *The Board shall consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the National Adjudicatory Council, and no fewer than 16 and no more than 22 Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, and a Nasdaq issuer. A majority of the Governors shall be Non-Industry Governors. If the Board consists of 21 to 23 Governors, at least five shall be Public Governors. If the Board consists of 24 to 27 Governors, at least six shall be Public Governors.*

(b) As soon as practicable[,] following the annual election [of members to the Board] of Governors, the Board [of Governors] shall elect from [the] *among its members [of the Board of Governors a Chairman,] a Chair* and such other persons having such titles as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. *The Chair of the National Adjudicatory Council may not serve as Chair of the Board. The Chair and other persons [so] elected under this subsection shall have such powers and duties as may be determined from time to time by the Board [of Governors]. The Board [of Governors, by affirmative vote of], by resolution adopted by a majority of [its members] the Governors then in office, may remove the Chair and any [such] person elected under this subsection from such position at any time.*

Term of Office of Governors

Sec. 5. [Each Governor, except as otherwise provided by the Restated Certificate of Incorporation or these By-Laws, shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until his successor is elected and qualified, or until his death, resignation, disqualification, or removal. Except for the Chief Executive Officer,

no Governor may serve more than two consecutive terms, provided, however, that if a Governor is appointed to fill a term of less than one year, such Governor may serve up to two consecutive terms following the expiration of such Governor's current term. The Chief Executive Officer of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, disqualification, or removal.]

(a) *The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq shall serve as Governors until a successor is elected, or until death, resignation, or removal.*

(b) *The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair of the National Adjudicatory Council may serve an initial term as a Governor and up to two consecutive terms as a Governor following the expiration of the initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD.*

(c) *The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.*

Disqualification

Sec. 6. Notwithstanding Section 5, the term of office of a Governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Governors, that: (a) The Governor no longer satisfies the classification (Industry, Non-Industry, or Public Governor) for which the Governor was elected; and (b) the Governor's continued service as such would violate the compositional requirements of the Board set forth in Section 4. If the term of office of a Governor terminates under this Section, and the remaining term of office of such Governor at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

Filling of Vacancies

Sec. [6.] 7. [(a) Any vacancy in the office of] *If a Governor position becomes vacant, whether [occurring by reason] because of death, disability, disqualification, removal, or resignation, [other than a vacancy by reason of an increase in the size of the Board, shall be filled] the National Nominating Committee shall nominate, and the Board shall elect by majority vote of the remaining Governors then in office [and any person elected to fill such vacancy shall satisfy the qualifications and criteria], a person satisfying the classification (Industry, Non-Industry, or Public Governor) for the governorship [being filled] as provided in Section 4 [of this Article.] to fill such vacancy, except that if the remaining term of office for the vacant Governor position is not more than six months, no replacement shall be required. If the remaining term of office for the vacant Governor position is more than one year, the Governor elected by the Board to fill such position shall stand for election in the next annual election pursuant to this Article. [(b) Any vacancy in the office of a Governor occurring by reason of an increase in the size of the Board shall be filled by majority vote of the Board and any person elected to fill such vacancy shall satisfy the criteria for such newly created governorship as shall be established by resolution of the Board, provided that the filling of any such vacancy shall not be inconsistent with any other provisions of these By-Laws or the Delegation Plan.]*

Meetings of Board; Quorum; Required Vote

Sec. 8. Meetings of the Board shall be held at such times and places, upon such notice, and in accordance with such procedure as the Board [of Governors] in its discretion may determine. [A] *At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum [of the Board of Governors] for the transaction of business shall consist of a majority of the [total number of Governors of the Corporation and any] Board, including not less than 50 percent of the Non-Industry Governors. Any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in the Restated Certificate of Incorporation or these By-Laws, shall constitute the action of the Board [of Governors]. [Members of the Board of] Governors[,] or members of any committee appointed by the Board [of Governors or any other committee of the Corporation,] under Article IX, Section 1 may participate in a meeting [thereof] of the Board or a committee by means of communications facilities that ensure all persons participating in the meeting can hear and speak to [each other] one another, and participation in a meeting pursuant to this By-Law shall constitute presence in person at such meeting. No [member of the Board of Governors] Governor shall vote by proxy at any meeting of the Board.*

The National Nominating Committee

Sec. [7. (b)] 9. (a) The National Nominating Committee shall [have such powers and shall perform such functions as shall be determined by resolution of the Board of Governors from time to time, consistent with the Delegation Plan] *nominate: Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board for election by the membership; Industry, Non-Industry, and Public Directors for each vacant or new position on the NASD Regulation Board and the Nasdaq Board for election by the Board; Industry, Non-Industry, and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board; and Industry and Non-Industry members for each vacant or new position on the Nasdaq Listing and Hearing Review Council for appointment by the Nasdaq Board.*

(b) The National Nominating Committee shall consist of [six or more persons who shall have such qualifications, and who shall be selected

in such manner, as shall be determined by resolution of the Board of Governors from time to time, which qualifications and manner of selection shall be consistent with the Delegation Plan] *no fewer than six and no more than nine members. The number of Industry committee members shall equal or exceed the number of Non-Industry committee members. If the National Nominating Committee consists of six members, at least two shall be Public committee members. If the National Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members shall be current members of the NASD Board.*

(c) A National Nominating Committee member may not simultaneously serve on the National Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the National Nominating Committee.

(d) Members of the National Nominating Committee shall be appointed annually by the Board and may be removed only by majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties. The NASD Regulation Board and the Nasdaq Board each shall propose two candidates to the NASD Board for appointment to the National Nominating Committee.

(e) The Secretary of the NASD shall collect from each nominee for Governor such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Governor, and the Secretary shall certify to the National Nominating Committee each nominee's classification.

(f) At all meetings of the National Nominating Committee, a quorum for the transaction of business shall consist of a majority of the National Nominating Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Procedure for Nomination of Governors

Sec. [7.(c)] 10. [At least 90 days prior] Prior to a meeting of members pursuant to Article XXI for the election of Governors, the [Corporation] NASD shall notify the members of the [date, place, and time of such meeting and shall set forth in such notice the] names of each nominee [(a "Nominee"), as] selected by the National Nominating Committee[,] for each governorship up for election, [and shall further provide in such notice the qualifications] the classification of governorship (Industry, Non-Industry, or Public Governor) for which the nominee is nominated, the qualifications of each nominee, and such other information regarding each [such Nominee] nominee as the National Nominating Committee deems pertinent. A person who has not been so nominated may be included on the ballot for the election of Governors if: [(1)](a) [at least 60] within 30 days [prior to the scheduled date for the meeting of members] after the date of such notice in 1997, or within 45 days after the date of such notice in 1998 and thereafter, such person [complies with the requirements and procedures for nomination set forth in the Delegation Plan and (2) the person is certified] presents to the Secretary of the NASD petitions in support of his or her nomination duly executed by three percent of the members; and (b) the Secretary certifies that (i) the petitions are duly executed by the Executive Representatives of the requisite number of members; and (ii) the person satisfies the classification (Industry, Non-Industry, or Public Governor) of the governorship to be filled, based on such information provided by the person as is reasonably necessary to make the certification. The Secretary shall not unreasonably withhold or delay the certification. Upon certification, the election shall be deemed a contested election. After the certification of a contested election or the expiration of time for contesting an election under this Section, the Secretary shall deliver notice of a meeting of members pursuant to Article XXI, Section 3(a).

Communication of Views

Sec. 11. The NASD, the Board, the National Nominating Committee, a committee appointed pursuant to Article IX, Section 1, and NASD staff shall not take any position publicly or with a member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the NASD Regulation By-Laws. A Governor or a member of the

National Nominating Committee or any other committee may communicate his or her views with respect to any candidate if such Governor or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of the NASD, the NASD Board, the National Nominating Committee, or any other committee. Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to a member or person associated with or employed by a member.

Administrative Support

Sec. 12. The Secretary of the NASD shall provide administrative support to the candidates in a contested election under this Article by sending to NASD members eligible to vote up to two mailings of materials prepared by the candidates. The NASD shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinions of the candidate. The candidate shall provide a copy of such material for each member of the NASD. A candidate nominated by the National Nominating Committee may identify himself or herself as such in his or her materials. Any candidate may send additional materials to NASD members at the candidate's own expense. Except as provided in this Article, the NASD, the Board, any committee, and NASD staff shall not provide any other administrative support to a candidate in a contested election conducted under this Article or a contested election or nomination conducted under the NASD Regulation By-Laws.

Election of [Board Members] Governors

Sec. [7.(a)] 13. [The members of the Board of] Governors shall be elected by a plurality of the votes of the members of the [Corporation] NASD present in person or represented by proxy at the annual meeting of the [Corporation] NASD and entitled to vote thereat. The annual meeting of the [Corporation] NASD shall be on such date and at such place as the Board [of Governors] shall designate pursuant to Article XXI. Any Governor so elected must be nominated by the National Nominating Committee or certified by the Secretary [described in subsection (b) below or certified] pursuant to [subsection (c) below and must satisfy the other qualifications for Governors set forth in Section 4 of this Article or as established by resolution of the Board of Governors from time to

time, which qualifications shall be consistent with the Delegation Plan] Section 10.

Maintenance of Compositional Requirements of the Board

Sec. 14. Each Governor shall update the information submitted under Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.

Resignation

Sec. 15. Any Governor may resign at any time either upon written notice of resignation to the Chair of the Board, the Chief Executive Officer, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Article [VII] VIII

Officers, Agents, and Employees Officers

Sec. 1. The Board [of Governors] shall [select] elect a Chief Executive Officer, who shall be responsible for the management and administration of its affairs and shall be the official representative of the [Corporation] NASD in all public matters and who shall have such powers and duties in the management of the [Corporation] NASD as may be prescribed in a resolution by the Board [of Governors], and which powers and duties shall not be inconsistent with the Delegation Plan. The Board shall elect a Chief Operating Officer and Secretary, who shall have such powers and duties conferred by these By-Laws and such other powers and duties as may be prescribed in a resolution by the Board. The Board may provide for such other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to, Executive Vice [-]President, Senior Vice[-] President, Vice [-]President, [Secretary,] and Treasurer of the [Corporation] NASD. All such officers shall have such titles, [such] powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board [of Governors]. Each such officer shall hold office until [his] a successor is elected and qualified or until [his] such officer's earlier resignation or removal. Any officer may resign at any time upon written notice

to the [Corporation] NASD. [The Board of Governors may remove any officer, with or without cause, at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by death, resignation, removal, or otherwise may be filled for the unexpired portion of the term by the Board of Governors at any meeting.]

Absence of Chief Executive Officer

Sec. 2. In the case of the absence or inability to act of the [President] *Chief Executive Officer* of the [Corporation] NASD, or in the case of a vacancy in such office, the Board [of Governors] may appoint its [Chairman] *Chair* or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the [President] *Chief Executive Officer*.

Agents and Employees

Sec. 3. *The Board may employ or authorize the employment and prescribe the powers and duties of such agents and employees as it deems necessary or advisable. The employment and compensation of such agents and employees shall be at the pleasure of the Board, provided that such determinations are not inconsistent with the requirements of the Delegation Plan. Except as provided in Article IX, Section 5(d), agents and employees of the NASD shall be under the supervision and control of the officers of the NASD, unless the Board provides by resolution that an agent or employee shall be under the supervision and control of the Board.*

Employment of Counsel

Sec. [3.] 4. The Board [of Governors] may retain or authorize the employment of counsel, with such powers, titles, duties, and authority as it shall deem necessary or advisable.

[Administrative Staff

Sec. 4. The Board of Governors may employ or authorize the employment and prescribe the powers and duties of such an administrative staff as it deems necessary or advisable. The employment and compensation of such administrative staff of the Corporation shall be at the pleasure of the Board of Governors, provided that such determinations are not inconsistent with the requirements of the Delegation Plan.]

Delegation of Duties of Officers

Sec. 5. *The Board may delegate the duties and powers of any officer of the NASD to any other officer or to any Governor for a specified period of time and for any reason that the Board may deem sufficient.*

Resignation and Removal of Officers

Sec. 6. (a) *Any officer may resign at any time upon written notice of resignation to the Board, the Chief Executive Officer, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.*

(b) *Any officer of the NASD may be removed, with or without cause, by resolution adopted by a majority of the Governors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Governors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the NASD.*

Bond

Sec. 7. *The NASD may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.*

Article [VIII] IX

Committees

Appointment

Sec. 1. [The] *Subject to Article VII, Section 1(c), the Board may appoint such committees or subcommittees as it deems necessary or desirable, and it shall fix their powers, duties, and terms of office; provided that such determinations are not inconsistent with requirements of the Delegation Plan.* Any such committee or subcommittee consisting *solely* of one or more Governors, to the extent provided by these By-Laws or by resolution of the Board, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the [Corporation] NASD.

Maintenance of Compositional Requirements of Committees

Sec. 2. *Upon request of the Secretary of the NASD, each prospective committee member who is not a Governor shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary shall certify to the Board each prospective*

committee member's classification. Each committee member shall update the information submitted under this Section at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.

Removal of Committee Member

Sec. [2] 3. [Any] A member of [any] a committee or subcommittee appointed pursuant to this Article [VIII] may be removed from such committee or subcommittee *only by a majority vote of the whole Board*, after appropriate notice, for refusal, failure, neglect, or inability to discharge [his] *such member's* duties [or for any cause the sufficiency of which shall be decided by the Board].

[Resolution of the Board of Governors

Interpretations and Explanations

The Executive Committee be and hereby is authorized and directed to consider and make recommendations to the Board of Governors with respect to such interpretative questions, having to do with the Certificate of Incorporation, By-Laws, Rules of Fair Practice and Code of Procedure of the Association, as may from time to time be submitted to the Committee by the Board of Governors or the President.

Where a decision is required as to which reasonable men, equally well informed, might well not differ, the ruling shall be deemed to be an explanation. Where a decision is required where reasonable men, equally well informed, might well differ, the ruling shall be deemed to be an interpretation.

Where in the judgment of the President and upon advice of Counsel, any question involves an answer clearly in the nature of an explanation, such question may be answered in the office of the President.

Where in the judgment of the President and upon advice of Counsel, any question involves an answer in the nature of an interpretation, the President shall present such question to the Executive Committee.

The President may, after consultation with and upon advice of Counsel, give an office opinion. Such office opinion shall state that it reflects only the opinion of the office of the President and it is provisional and subject to the approval of the Board of Governors.

District Committees, District Business Conduct Committees, Counsel or staff thereof, are hereby directed not to issue any interpretations of the Certificate of Incorporation, By-Laws, Rules of Fair

Practice or Code of Procedure, either in oral or written form without presentation of the question to the President and in such case, if the questions presented appear to be an interpretation with the meaning of this resolution the matter shall be presented in writing to the Executive Committee.]

Executive Committee

Sec. 4. (a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the NASD between meetings of the Board, and which may authorize the seal of the NASD to be affixed to all papers that may require it.

(b) The Executive Committee shall consist of no fewer than five and no more than nine Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, at least one Director of NASD Regulation, at least one Director of Nasdaq, and at least two Governors who are not Directors of NASD Regulation or Nasdaq. The number of Directors of the NASD Regulation Board and the number of Directors of the Nasdaq Board serving on the Executive Committee shall be equal at all times. The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

(c) An Executive Committee member shall hold office for a term of one year.

(d) At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Audit Committee

Sec. 5. (a) The Board shall appoint an Audit Committee. The Audit Committee shall consist of four or five Governors, none of whom shall be officers or employees of the Association. A majority of the Audit Committee members shall be Non-Industry Governors. The Audit Committee shall include two Public Governors. A Public Governor shall serve as Chair of the Committee. An Audit Committee

member shall hold office for a term of one year.

(b) The Audit Committee shall perform the following functions: (i) ensure the existence of adequate controls and the integrity of the financial reporting process of the NASD; (ii) recommend to the NASD Board, and monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD; and (iii) direct and oversee all the activities of the NASD's internal review function, including but not limited to management's responses to the internal review function.

(c) No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company, or individual if such Audit Committee member has a material interest in, or a professional, business, or personal relationship with, that member, company, or individual, or if such participation shall create an appearance of impropriety. An Audit Committee member shall consult with the General Counsel of the NASD to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.

(d) The Audit Committee shall have exclusive authority to: (i) hire or terminate the Director of Internal Review; (ii) determine the compensation of the Director of Internal Review; and (iii) determine the budget for the Office of Internal Review. The Office of Internal Review and the Director of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters the Audit Committee deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.

(e) At all meetings of the Audit Committee, a quorum for the transaction of business shall consist of a majority of the Audit Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Finance Committee

Sec. 6(a) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the NASD, including recommendations for the NASD's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD.

(b) The Finance Committee shall consist of four or more Governors. The Chief Executive Officer of the NASD shall be a member of the Finance Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the Chief Executive Officer of the NASD. A Finance Committee member shall hold office for a term of one year.

(c) At all meetings of the Finance Committee, a quorum for the transaction of business shall consist of a majority of the Finance Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Article X

Compensation of Board and Committee Members

[Article VII, Sec. 5.] Sec. 1. The Board may provide for reasonable compensation of the [Chairman] Chair of the Board, the Governors, and the members of any committee [of the Board from the Corporation]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the [Corporation] NASD.

Article [IX] XI

Rules

Sec. 1. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the [Corporation] NASD, to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, to protect investors and the public interest, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the [Corporation] NASD and of the Act, the Board [of Governors] is hereby authorized to adopt such [Rules of Fair Practice] rules for the members and persons associated with members, and

such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such [Rules] *rules* or amendments thereto are approved by the Commission as provided in the Act, they shall become effective Rules of the Association as of such date as the Board [of Governors] may prescribe. The Board [of Governors] is hereby authorized, subject to the provisions of the By-Laws and the Act, to administer, enforce, suspend, or cancel any Rules of [Fair Practice] *the Association* adopted hereunder.

Article [X] *XII*

Disciplinary Proceedings

Sec. 1. The Board [of Governors] shall have authority to establish procedures relating to disciplinary proceedings involving members and their associated persons.

Sec. 2. Except as otherwise permitted under these By-Laws or the Act, in any disciplinary proceeding [before the Corporation] *under the Rules of the Association*, any member or person associated with a member shall be given the opportunity to have a hearing at which [he] *such member or person associated with a member* shall be entitled to be heard in person [and/or by counsel] *or by counsel or by a representative as provided in the Rules of the Association*. Such persons may present any relevant material *in accordance with the Rules of the Association*. In any such proceeding against a member or against a person associated with a member to determine whether the member [and/or] *or the person associated with a member* shall be disciplined:

- (a) Specific charges shall be brought;
- (b) Such member or person associated with a member shall be notified of and be given an opportunity to defend against such charges;
- (c) A record shall be kept; and
- (d) Any determination shall include a statement setting forth:

[(1) *(i)* Any act or practice, in which such member or person associated with a member may be found to have engaged or which such member or person associated with a member may be found to have omitted;

[(2) *(ii)* The rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;

[(3) *(iii)* The basis upon which any findings are made; and

[(4) *(iv)* The [penalty] *sanction* imposed.

Article [XI] *XIII*

Powers of Board to [Prescribe] *Impose* Sanctions

Sec. 1. The Board is hereby authorized to [prescribe] *impose* appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of activities, functions, and operations of a member, or any other fitting sanction, and to [prescribe] *impose* appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:

(a) Breach by a member or a person associated with a member of any covenant with the [Corporation] *NASD* or its members;

(b) Violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the [rules of the Corporation] *By-Laws of the NASD, NASD Regulation, or Nasdaq, the Rules of the Association*, or the federal securities laws, including the rules and regulations adopted thereunder, [and including] *the rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department*;

(c) Failure by a member or person associated with a member to: *(i)* Submit a dispute for arbitration [under the Code of Arbitration Procedure ("Arbitration Code")] as required by the [Arbitration Code] *Rules of the Association*[,] ; [or to fail to] *(ii)* appear or [to] produce any document in [their] *the member's or person's* possession or control as directed pursuant to [provisions of] the [Arbitration Code] *Rules of the Association*[,] ; [or to fail to honor] *(iii)* comply with an award of arbitrators properly rendered pursuant to the [Arbitration Code] *Rules of the Association*, where a timely motion [has not been made] to vacate or modify such award *has not been made* pursuant to applicable law *or where such a motion has been denied*; *or (iv) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Association*;

(d) Refusal by a member or person associated with a member to abide by an official ruling of the Board or any committee exercising powers assigned by the Board with respect to any

transaction which is subject to the Uniform Practice Code; or

(e) Failure by a member or person associated with a member to adhere to any ruling, order, direction, or decision of[,] or to pay any [penalty,] *sanction*, fine, or costs[,] imposed by the Board[, or any committee exercising powers assigned by the Board] *or any entity to which the Board has delegated its powers in accordance with the Delegation Plan*.

Sec. 2. *The Board may delegate its authority under this Article in accordance with the Delegation Plan.*

Article [XII] *XIV*

Uniform Practice Code

Authority to Adopt Code

Sec. 1. The Board [of Governors] is hereby authorized to adopt a Uniform Practice Code and amendments, interpretations and explanations thereto, designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business with respect to such matters as trade terms, deliveries, payments, dividends, rights, interest, reclamations, exchange of confirmations, stamp taxes, claims, assignments, powers of substitution, computation of interest and basis prices, due-bills, transfer fees, "when, as and if issued" trading, "when, as and if distributed" trading, marking to the market, and close-out procedure, all to the end that the transaction of day-to-day business by members may be simplified and facilitated, that business disputes and misunderstandings, which arise from uncertainty and lack of uniformity in such matters, may be eliminated, and that the mechanisms of a free and open market may be improved and impediments thereto removed.

Administration of Code

Sec. 2. The administration of any Uniform Practice Code, or any amendment thereto, adopted by the Board [of Governors] pursuant to Section 1 [of this Article], shall be vested in the Board [of Governors], and the Board is hereby granted such powers as are reasonably necessary to achieve its effective operation. In the exercise of such powers, the Board may issue explanations and interpretations and make binding rulings with respect to the applicability of the provisions of the Uniform Practice Code to situations in which there is no substantial disagreement as to the facts involved. [The] *In accordance with the Delegation Plan*, the Board may delegate to [appropriate committees such of its

powers,] *the NASD Regulation Board and the Nasdaq Board such of the Board's powers* hereunder as it deems necessary and appropriate to achieve effective administration and operation of the Uniform Practice Code.

Transactions Subject to Code

Sec. 3. All over-the-counter transactions in securities by members, except transactions in securities which are exempted under Section 3(a)(12) of the Act, or are municipal securities as defined in Section 3(a)(29) of the Act, are subject to the provisions of the Uniform Practice Code and to the provisions of Section 2 [of this Article] unless exempted therefrom by the terms of the Uniform Practice Code.

Article [XIII] XV Limitation of Powers Prohibitions

Sec. 1. Under no circumstances shall the Board [of Governors] or any officer, employee, or member of the [Corporation] NASD have the power to:

(a) Make any donation or contribution from the funds of the [Corporation] NASD or to commit the [Corporation] NASD for the payment of any donations or contributions for political or charitable purposes; or

(b) Use the name of the facilities of the [Corporation] NASD in aid of any political party or candidate for any public office.

Use of Name of [Corporation] *the NASD* by Members

Sec. 2. No member shall use the name of the [Corporation] NASD except to the extent that may be [authorized by the Board of Governors] *permitted by the Rules of the Association*.

[Resolution of the Board of Governors Limitations Upon Use of the Association Name

Members are permitted, in conformity with Article XVI, Section 2 of the Association's By-Laws, and within the limitations prescribed by this Resolution, to indicate membership in the Association in the following manner:

1. Solely as a matter of record in recognized trade directories or other similar types of business listings.

2. Solely in conjunction with the identifying use of the firm name on letterheads, booklet covers, sales literature headings, in the masthead of market letters and on other similar types of circular material, so long as this use is exclusively for identification purposes, is separate and apart from the regular text of the literature and is always in a smaller size type and with

lesser emphasis than that used for the firm name.

3. The Association's name may be used in institutional or any other type of general print and/or electronic advertising media so long as such use is solely and exclusively for identifying the firm as a member, used only in proximity to and in conjunction with the firm name, carries no implied or specific indication of Association approval of the securities or services discussed in the advertisement, is separate and apart from the primary text material in the advertisement, and is always in a smaller size type and of lesser emphasis than that used for the firm name.

4. The following language may be used on confirmation forms, "this transaction (if over-the-counter) has been executed in conformity with the rules and regulations of the Uniform Practice Code of the National Association of Securities Dealers, Inc."

5. The name of the Association may be used on the door or entrance way of a member's principal office or any registered branch office in the following manner: "Member, (of the) National Association of Securities Dealers, Inc."

6. Each member shall be entitled to receive upon request to the Association an appropriate certification of membership which may be displayed in the principal office or any registered branch office of the member. Such certification shall be and remain the property of the Association and shall be returned by a member upon request of the Board of Governors or the President of the Association.

No member or person associated with a member shall use the name of the Association in a fraudulent or misleading manner in connection with the promotion or sale of any specific security or in connection with any other aspect of the member's business; or imply orally, visually or in writing that the Association endorses, indemnifies or guarantees any member's business practices, selling methods or class or type of securities offered.

Any improper, fraudulent or misleading use of the Association's name by a member or person associated with a member shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Association's Rules of Fair Practice.]

Unauthorized Expenditures

Sec. 3. No officer, employee, member of the Board [of Governors] or of any committee[,] shall have any power to incur or contract any liability on behalf

of the [Corporation] NASD not authorized by the Board [of Governors]. The Board may delegate to the Chief Executive Officer of the [Corporation or his delegate] *NASD or the Chief Executive Officer's delegate*[,] such authority as it deems necessary to contract on behalf of the [Corporation] NASD or to satisfy unanticipated liabilities during the period between Board meetings.

Conflicts of Interest

Sec. 4. (a) A Governor or a member of [the Board of Governors or of any] a committee [of the Corporation] shall not directly or indirectly participate in any adjudication of the interests of any party if such [participation would violate the] *Governor or committee member has a conflict of interest [provisions of the Procedural Rules of the Corporation] or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.*

(b) *No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and NASD Regulation or Nasdaq.*

Municipal Securities

Sec. 5. The provisions of the By-Laws conferring rulemaking authority upon the Board [of Governors] shall not be applicable to the municipal securities

activities of members or persons associated with members to the extent that the application of such authority would be inconsistent with Section 15B of the Act.

Government Securities

Sec. 6. The provisions of the By-Laws governing qualifications of members and persons associated with members and conferring rulemaking authority upon the Board of Governors shall not be applicable to the Government securities activities of members or persons associated with members to the extent that the application of such provisions or authority would be inconsistent with Section 15A(f) of the Act.]

Article [XIV] XVI

Procedure for Adopting Amendments to By-Laws

Sec. 1. [Any member of the Board of Governors by resolution, any District Committee by resolution, or any twenty-five members of the Corporation by petition signed by such members.] A Governor or a committee appointed by the Board may propose amendments to these By-Laws. Any 25 members of the NASD by petition signed by such members may propose amendments to these By-Laws. Every proposed amendment shall be presented in writing to the Board [of Governors], and a record shall be kept thereof. The [Board of Governors] Board may adopt any proposed amendment to these By-Laws by affirmative vote of a majority of the [members of the Board of] Governors then in office. The Board [of Governors], upon adoption of any such amendment to these By-Laws, except as otherwise provided in these By-Laws, shall forthwith cause a copy to be sent to and voted upon by each member of the [Corporation] NASD. If such amendment to these By-Laws is approved by a majority of the members voting within [thirty (30)] 30 days after the date of submission to the membership, and is approved by the Commission as provided in the Act, it shall become effective as of such date as the Board [of Governors] may prescribe.

Article [XV] XVII

Corporate Seal

Sec. 1. The corporate seal shall have inscribed thereon the name of the [Corporation] NASD, the year of its organization and the words "Corporate Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be imposed or affixed or reproduced or otherwise.

Article [XVI] XVIII

Checks

Sec. 1. All checks or demands for money and notes of the [Corporation] NASD shall be signed by such officer or officers or such other person or persons as the Board [of Governors] may from time to time designate.

Article [XVII] XIX

Annual Financial Statement

Sec. 1. As soon as practicable after the end of each fiscal year, the Board [of Governors] shall send to each member of the [Corporation] NASD a reasonably itemized statement of receipts and expenditures of the [Corporation] NASD for such preceding fiscal year.

Article XX

Record Dates

Fixing of Date by Board

Sec. 1. In order that the NASD may determine the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, pursuant to Section 213 of the General Corporation Law of the State of Delaware. Only such members as shall be members of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent.

Default Date

Sec. 2. If no record date is fixed by the Board, the record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

Adjournment

Sec. 3. A determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Article XXI

Meetings of Members

Annual Meeting

Sec. 1. The annual meeting shall be on such date and at such place as the Board shall designate. The business of the meeting shall include: (a) election of the members of the Board pursuant to

Article VII, Section 13; and (b) the proposal of business (i) by or at the direction of the Chairman of the Board or the Board, or (ii) by any member entitled to vote at the meeting who complied with the notice procedures set forth in Section 3 and was a member at the time such notice was delivered to the Secretary of the NASD.

Special Meetings

Sec. 2. A special meeting shall be on such date and at such place as the Board shall designate. Only such business shall be conducted at a special meeting as shall have been brought before the meeting pursuant to Section 3(a); provided, however, that in no event shall the announcement to the members of an adjournment of a special meeting commence a new time period for the giving of notice.

Notice of Meeting; Member Business

Sec. 3. (a) Notice of each meeting shall be written or printed; shall state the date, time, and place of the meeting; shall state the purpose or purposes for which the meeting is called; and unless it is the annual meeting, indicate that the notice is being issued at the direction of the person or persons calling the meeting. The Secretary of the NASD shall deliver the notice to the Executive Representative of each member entitled to vote not less than 30 days nor more than 60 days before the date of an annual meeting and not less than ten days nor more than 60 days before the date of a special meeting. If mailed, the notice shall be deemed to be delivered when deposited with postage in the United States mail and addressed to the Executive Representative of the member as it appears on the records of the NASD. Such further notice shall be given as may be required by law. Meetings may be held without notice if all members entitled to vote are present (except as otherwise provided by law), or if notice is waived by those not present. Any previously scheduled meeting of the members may be postponed and any special meeting of the members may be canceled by resolution of the Board upon notice given to the members prior to the time previously scheduled for the meeting.

(b) For business other than the election of Governors to be brought properly before an annual meeting by a member pursuant to Section 1, the member must have given timely notice thereof in writing to the Secretary of the NASD and such other business must otherwise be a proper matter for member action. To be timely, a member's notice shall be delivered to the Secretary at the NASD's principal

executive offices within 30 days after the date of the notice of the meeting. Such member's notice shall set forth a brief description of the business desired to be brought before the meeting, any material interest of the member in such business, and the reasons for conducting such business at the meeting. In no event shall the announcement to the members of an adjournment of an annual meeting commence a new time period for the giving of a member's notice as described above.

(c) Except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether any nomination or other business proposed to be brought before the meeting pursuant to subsection (b) or Article VII, Section 10 was made in accordance with the procedures set forth herein and, if any proposed nomination or business is not in compliance with these By-Laws, to declare that such defective nomination or proposal shall be disregarded.

Inspector

Sec. 4. At each meeting of the members, the polls shall be opened and closed, the proxies and ballots received and taken in charge, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided by an inspector appointed by the Secretary of the NASD before the meeting, or in default thereof by the chairman of the meeting. If the inspector previously appointed fails to attend or refuses or is unable to serve, a substitute shall be appointed by the chairman of the meeting. The inspector shall not be a Governor, officer, or employee of the NASD or a director, officer, partner, or employee of an NASD subsidiary or member.

Conduct of Meetings

Sec. 5. The chairman of the meeting shall be the Chief Executive Officer of the NASD or his or her designee. The date and time of the opening and closing of the polls for each matter upon which the members will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of members as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations, and procedures and

to do all such acts as, in the judgment of the chairman of the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) The establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to members, their duly authorized and constituted proxies, or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of members shall not be required to be held in accordance with the rules of parliamentary procedure.

* * * * *

By-Laws of NASD Regulation, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "Board" means the Board of Directors of NASD Regulation;

(c) "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(d) "Commission" means the Securities and Exchange Commission;

(e) "day" means calendar day;

(f) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

(g) "Delaware law" means the General Corporation Law of the State of Delaware;

(h) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(i) "Director" means a member of the Board, excluding the Chief Executive Officer of the NASD;

(j) "district" means a district established by the Board pursuant to Article VIII, Section 8.1 of these By-Laws;

(k) "District Committee" means a District Committee elected pursuant to Article VIII of these By-Laws;

(l) "District Director" means an NASD Regulation staff member who heads a district office;

(m) "District Nominating Committee" means a District Nominating Committee elected pursuant to Article VIII of these By-Laws;

(n) "district office" means an office of NASD Regulation located in a district;

(o) "Executive Representative" means the executive representative of an NASD member appointed pursuant to Article IV, Section 3 of the NASD By-Laws;

(p) "Independent Agent" means a corporation or entity selected by the Secretary of NASD Regulation to assist NASD Regulation with nomination and election procedures under Articles VI and VIII of these By-Laws and the representatives of such corporation or entity;

(q) "Industry Director" or "Industry member" means a Director (excluding the President) or a National Adjudicatory Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a

director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(r) "NASD" means the National Association of Securities Dealers, Inc.;

(s) "NASD Board" means the NASD Board of Governors;

(t) "NASD member" means any broker or dealer admitted to membership in the NASD;

(u) "NASD Regulation" means NASD Regulation, Inc.;

(v) "National Adjudicatory Council" means a body appointed pursuant to Article V of these By-Laws.

(w) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(x) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President) or a National Adjudicatory Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

(y) "person associated with a member" or "associated person of a member" means: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

(z) "Public Director" or "Public member" means a Director or National Adjudicatory Council or committee member who has no material business relationship with a broker or dealer or

the NASD, NASD Regulation, or Nasdaq;

(aa) "Regional Nominating Committee" means a Regional Nominating Committee that nominates to the National Nominating Committee a candidate for the National Adjudicatory Council to represent a geographical region as provided in Article VI of these By-Laws; and

(bb) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article [I] II

Offices

Location

Sec. [1.1] 2.1 The address of the registered office of [the Corporation] NASD Regulation in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange [St.,] Street, Wilmington, [DE] Delaware 19801. [The Corporation may] NASD Regulation also may have offices at such other places both within and without the State of Delaware as the Board [of Directors] may from time to time designate or the business of [the Corporation] NASD Regulation may require.

Change of Location

Sec. [1.2] 2.2 In the manner permitted by law, the Board [of Directors] or the registered agent may change the address of [the Corporation's] NASD Regulation's registered office in the State of Delaware and the Board [of Directors] may make, revoke, or change the designation of the registered agent.

Article [II] III

Meetings of the [Stockholders] Stockholder

[Annual Meeting]

Sec. 2.1 The annual meeting of stockholders of the Corporation for the election of Directors and for the transaction of such other business as may properly come before the meeting shall be held on such date, and at such time, and place, within or without the State of Delaware, as may be fixed, from time to time, by the Board of Directors.]

[Special Meetings]

Sec. 2.2 Special meetings of stockholders of the Corporation, unless otherwise prescribed by law, may be called at any time by the Chair of the

Board, by the President or by order of a majority of the Board of Directors. Special meetings of stockholders prescribed by law for the election of directors shall be called by the Board of Directors, the President, or the Secretary. Special meetings of stockholders shall be held at such place within or without the State of Delaware as shall be designated in the notice of meeting.]

[Notice of Meetings]

Sec. 2.3(a) Whenever stockholders are required or permitted to take any action at a meeting, they shall be given written notice stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes thereof. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, written notice shall be delivered or mailed at least ten but not more than sixty days before such meeting date to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deposited in the United States mail, postage prepaid, directed to each stockholder at the address that appears on the records of the Corporation.]

[(b) When a meeting of stockholders is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If, however, the adjournment is for more than thirty days from the date of the original meeting, or if, after the adjournment, a new record date is set for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in the manner prescribed above in subsection (a).]

[Quorum]

Sec. 2.4 Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority of the outstanding shares of capital stock entitled to vote or act at such a meeting shall constitute a quorum for the transaction of any business. In the absence of a quorum, the stockholders so present may by majority rule, adjourn any meeting until a quorum shall be present. When a quorum is once present to organize a meeting, the quorum cannot be destroyed by the subsequent withdrawal or revocation of the proxy of any stockholder.]

[Voting]

Sec. 2.5(a) At any meeting of stockholders, each stockholder as of the record date is entitled to one vote for each such share of stock having voting power, upon the matter in question, except as otherwise provided in the Certificate of Incorporation. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, provided that no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary of the Corporation.]

[(b) Directors of the Corporation shall be elected by a plurality of the votes cast at a meeting of stockholders pursuant to Sec. 2.5 of these By-Laws. Corporate action other than the election of directors shall be authorized by a majority of the votes cast at a meeting of stockholders, except as otherwise required by law, the Certificate of Incorporation or these By-Laws.]

[(c) Upon the demand of any stockholder entitled to vote, the election of directors or a vote on any other matter at a meeting of stockholders shall be by written ballot; otherwise, the method of voting and the manner in which votes are counted at such a meeting shall be discretionary with the presiding officer of the meeting.]

[Presiding Officer and Secretary]

Sec. 2.6 At every meeting of stockholders, the Chair, or in his/her absence, the President, or in his/her absence, the appointee of the meeting, shall preside. The Secretary, or in his/her absence, the appointee of the presiding officer of the meeting, shall act as Secretary of the meeting.]

Action by Consent of [Stockholders] Stockholder

Sec. [2.7]3.1 Any action required[, or permitted by law to be taken at any meeting of the [stockholders] stockholder of [the Corporation] NASD Regulation may be taken without a meeting, without prior notice and without a vote, if a consent in writing,

setting forth the action so taken, is signed by the [holders] holder of the outstanding stock [having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of corporate action without a meeting and by less than unanimous written consent shall be given to those stockholders who have not consented in writing].

Article [III] IV

Board of Directors

General Powers

Sec. [3.1]4.1 The property, business, and affairs of [the Corporation] NASD Regulation shall be managed by or under the direction of the Board [of Directors]. The Board [of Directors] may exercise all such powers of [the Corporation] NASD Regulation and have the authority to perform all such lawful acts as are permitted by law, the Restated Certificate of Incorporation [or], these By-Laws, or the Delegation Plan to assist the [National Association of Securities Dealers, Inc.] NASD in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the [Securities Exchange Act of 1934, and] Act, and to support such other initiatives as the Board [of Directors] may deem appropriate. To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to NASD Regulation staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

Sec. [3.2]4.2 [The Board of Directors of the Corporation shall consist of one or more members; the exact number of directors that shall constitute the whole Board of Directors shall be fixed from time to time by resolution adopted by the whole Board of Directors. After fixing the number of directors constituting the whole Board of Directors, the Board of Directors may, by resolution adopted by the whole Board of Directors, from time to time change the number of directors constituting the whole Board of Directors; provided that such determination shall be consistent with the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the "Delegation Plan").] The Board shall consist of no fewer than five and no more than eight Directors, the exact number to be determined by resolution adopted by the stockholder of

NASD Regulation from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of directors on the Nasdaq Board. Any new Director position created as a result of an increase in the size of the Board shall be filled as part of the annual election conducted under Section 4.4.

Qualifications

Sec. [3.3]4.3 (a) Directors need not be stockholders of [the Corporation]. The Board of Directors shall include at all times the President of the Corporation and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Directors, which determination shall be consistent with the Delegation Plan. The criteria for the categories of Industry, Non-Industry, and Public Directors, as used herein, shall be established by the Board of Directors from time to time, which criteria shall be consistent with the Delegation Plan.] NASD Regulation. Only Governors of the NASD Board shall be eligible for election to the Board. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors plus the President. The Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member. The Board shall include at least one Public Director, unless the Board consists of eight Directors. In such case, at least two Directors shall be Public Directors. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.

(b) As soon as practicable, following the annual election of Directors, the Board shall elect from its members a Chair and a Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual election or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Election

Sec. [3.4]4.4 Except as otherwise provided by law [or], these By-Laws, or the Delegation Plan, after the first meeting of [the Corporation] NASD Regulation at which [directors] Directors are elected, [directors of the Corporation] Directors of NASD

Regulation shall be elected each year at the annual meeting of [stockholders] *the stockholder*, or at a special meeting called for such purpose in lieu of the annual meeting [, by a plurality of the votes cast at such meeting]. If the annual election of [directors] *Directors* is not held on the date designated [therefore,] *therefor*, the [directors] *Directors* shall cause such election to be held as soon thereafter as convenient.

[Term

Sec. 3.5 (a) Each Director shall hold office for a term of three years or until his successor is duly elected and qualified, except in the event of earlier termination from office by reason of death, resignation, removal with or without cause, or other reason.]

[(b) The Board of Directors shall be divided into three classes.]

[(c) The President of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, or removal.]

[(d) Except for the President, no Director may serve more than two consecutive terms; provided, however, that if a Director is appointed to fill a term of less than one year, such Director may serve up to two consecutive terms following the expiration of such Director's current term.]

[(e) Each director chosen to fill a newly created directorship shall serve until the next succeeding annual meeting of stockholders.]

Resignation

Sec. [3.6] 4.5 Any [director] Director may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time [be] is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. [3.7] 4.6 Any or all of the [directors] Directors may be removed from office at any time, with or without cause, [by the stockholders] only by a majority vote of the NASD Board.

Disqualification

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification (Industry, Non-Industry, or Public Director) for which the Director was elected; and (b)

the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. [3.8] 4.9(a) At all meetings of the Board [of Directors, one-third of the total number of directors shall constitute], unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors. In the absence of a quorum, a majority of the [directors] Directors present may adjourn the meeting until a quorum [be] is present.

(b) [A director interested in a matter to be acted upon by the Board of Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors that determines the Corporation's action.]

[(c) Subject to the restrictions of Section 3.12] Except as provided in Section 4.14(b), the vote of a majority of the [directors] Directors present at a meeting at which a quorum is present shall be the act of the Board [of Directors].

Regulation

Sec. [3.9] 4.10 The Board [of Directors] may adopt such rules, regulations, and requirements for the conduct of the business and management of [the Corporation,] NASD Regulation not inconsistent with the law, the Restated Certificate of Incorporation, these By-Laws, [or the rules and By-Laws of the National Association of Securities Dealers, Inc., as the Board of Directors may deem proper. A member of the Board of Directors] the Rules of the Association,

or the By-Laws of the NASD, as the Board may deem proper. A Director shall, in the performance of [his or her] such Director's duties, be fully protected in relying in good faith upon the books of account or reports made to [the Corporation] NASD Regulation by any of its officers, [or] by an independent certified public accountant, [or] by an appraiser selected with reasonable care by the Board [of Directors] or any committee of the Board [of Directors] or by any agent of [the Corporation] NASD Regulation, or in relying in good faith upon other records of [the Corporation] NASD Regulation.

Meetings

Sec. [3.10] 4.11(a) An annual meeting of the Board [of Directors] shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of [stockholders] the stockholder, no notice of the annual meeting of the Board [of Directors] need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [3.11 of these By-Laws] 4.12.

(b) Regular meetings of the Board [of Directors] may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board [of Directors]. After such determination has been made, notice shall be given in accordance with Section [3.11 of these By-Laws] 4.12.

(c) Special meetings of the Board [of Directors] may be called by the Chair of the Board, [or] by the President, or by at least one-third of the [directors at that time being] Directors then in office. Notice of any special meeting of the Board [of Directors] shall be given to each [director] Director in accordance with Section [3.11 of these By-Laws] 4.12.

(d) [Members of the Board of Directors, or any committee designated by the Board of Directors,] A Director or member of any committee appointed by the Board may participate in a meeting of the Board [of Directors] or of such committee through the use of a conference telephone or similar communications [facilities that ensure] equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. [3.11] 4.12(a) Notice of any meeting of the Board [of Directors] shall

be deemed to be duly given to a [director] Director if: (i) [if] mailed to the address last made known in writing to [the Corporation] NASD Regulation by such [director] Director as the address to which such notices are to be sent, at least [two] seven days before the day on which such [special] meeting is to be held[, or]; (ii) [if] sent to the [director] Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held[,]; or (iii) [if] delivered to the [director] Director personally or orally, by telephone or otherwise, not later than the day before the day on which such [special] meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board [of Directors] need not be given to any [director] Director if waived by that [director] Director in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such [director] Director is present at such meeting, subject to [Section 7.3(b) hereof] Article XII, Section 12.3(b).

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat.

Committees [of the Board of Directors]

Sec. [3.13]4.13(a) The Board [of Directors] may, by resolution or resolutions adopted by a majority of the whole Board [of Directors, designate], appoint one or more committees[, each committee to consist of one or more directors of the Corporation]. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board [of Directors]. The Board [of Directors] may designate one or more [directors] Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not [he, she,] such member or [they] members constitute a quorum, may unanimously appoint another [member of the Board of Directors] Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board [of Directors, subject, however, to removal, with or without

cause, at any time by the vote of a majority of the whole Board of Directors]. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

(b) [Any committee, to the extent permitted by law and to the extent provided in the] The Board may, by resolution or resolutions [creating such committee, shall have and may exercise all the powers and authority of the Board of Directors] adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to NASD Regulation by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of [the Corporation, and] NASD Regulation to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of [the Corporation] NASD Regulation to be affixed to all papers that may require it.

(c) Except as otherwise permitted by applicable law, no [such] committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of [the Corporation,] NASD Regulation; adopting an agreement of merger or consolidation; recommending to the [stockholders] stockholder the sale, lease, or exchange of all or substantially all [the Corporation's] NASD Regulation's property and assets; or recommending to the [stockholders] stockholder a dissolution of [the Corporation] NASD Regulation or a revocation of a dissolution. Unless the resolution of the Board [of Directors] expressly so provides, no [such] committee shall have the power or authority to authorize the issuance of stock.

[(c)] (d) Each committee may adopt its own rules of procedure and may meet

at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board [of Directors] when required.

[(d)] (e) Unless otherwise provided by [the Board of Directors] these By-Laws, a majority of [any such] a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of NASD Regulation between meetings of the Board, and which may authorize the seal of NASD Regulation to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Regulation shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the President. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(g) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of NASD Regulation, including recommendations for NASD Regulation's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD Regulation. The Finance Committee shall consist of three or four Directors. The President of NASD Regulation shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.

(h) Upon request of the Secretary of NASD Regulation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public

committee member. The Secretary of NASD Regulation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of NASD Regulation, and shall report immediately to the Secretary any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. [3.12] 4.14 (a) [No member of the Board of Directors or of any committee of the Corporation shall] A Director or a National Adjudicatory Council or committee member shall not directly or indirectly participate in any adjudication of the interests of any party [that would at the same time substantially affect his interest or the interests of any person in whom he is directly or indirectly interested] if that Director or National Adjudicatory Council or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the [member shall disqualify himself or shall be disqualified by the Chairman of the Board or Committee] Director or National Adjudicatory Council or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between [the Corporation] NASD Regulation and one or more of its [directors] Directors or officers, or between [the Corporation] NASD Regulation and any other corporation, partnership, association, or other organization in which one or more of its [directors] Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason[, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or the committee thereof which] if: (i) The material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction[, or solely because his, her, or their votes are counted for such purposes if: (i) The material facts pertaining to such director's or officer's relationship or interest and] by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the

contract or transaction [are disclosed or are known to the Board of Directors or the committee, and the Board] is entered into, and the Board or committee in good faith [authorizes] ratifies the contract or transaction by the affirmative vote of a majority of the disinterested [directors, even though the disinterested directors be less than a quorum; or (ii)] Directors; or (iii) the material facts pertaining to the [director's] Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholders] stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors] stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board [of Directors,] or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Regulation and the NASD or Nasdaq.

Action Without Meeting

Sec. [3.14]4.15 Any action required or permitted to be taken at [any] a meeting of the Board [of Directors or any] or of a committee [thereof] may be taken without a meeting if all Directors or all members of [the Board of Directors or] such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board [of Directors or such] or the committee.

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 NASD Regulation, the Board, any committee, the National Adjudicatory Council, and NASD Regulation staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the NASD By-Laws. A Director, committee member, or National Adjudicatory Council member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of NASD Regulation, the Board, the National Adjudicatory Council, or any committee. NASD Regulation, the

Board, the National Adjudicatory Council, any committee, and the NASD Regulation staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to these By-Laws or the NASD By-Laws.

[Article V Indemnification

Indemnification of Directors, Officers, Employees and Agents Right to Indemnification

Sec. 5.1 The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans (an "indemnitee"), against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such indemnitee, notwithstanding the foregoing, but subject to Section 5.3 hereof, the corporation shall be required to indemnify an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if the initiation of such proceeding (or part thereof) by the indemnitee was authorized by the Board of Directors.]

[Payment of Expenses

Sec. 5.2 The corporation shall pay the expenses (including attorneys' fees) incurred by the persons set forth in Section 5.1 in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article or otherwise.]

[Nonexclusivity of Rights

Sec. 5.3 The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the

Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.]

[Other Indemnification]

Sec. 5.4 The corporation's obligation, if any, to indemnify or advance expenses to any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise or nonprofit entity.]

[Amendment or Repeal]

Sec. 5.5 Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.]

[Indemnification Insurance]

Sec. 5.6 The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this section.]

Article V National Adjudicatory Council Appointment and Authority

Sec. 5.1 The Board shall appoint a National Adjudicatory Council. The National Adjudicatory Council may be authorized to act for the Board in a manner consistent with these By-Laws, the Rules of the Association, and the Delegation Plan with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions authorized by the Rules of the Association. The National Adjudicatory Council also shall consider and make recommendations to the Board on policy and rule changes relating to the business and sales

practices of NASD members and associated persons and enforcement policies, including policies with respect to fines and other sanctions. The Board may delegate such other powers and duties to the National Adjudicatory Council as the Board deems appropriate in a manner not inconsistent with the Delegation Plan.

Number of Members and Qualifications

Sec. 5.2 (a) The National Adjudicatory Council shall consist of no fewer than 12 and no more than 14 members. The number of Non-Industry members, including at least three Public members, shall equal or exceed the number of Industry members. In 1999 and thereafter, the Industry members shall represent a geographic region designated by the Board under Article VI, Section 6.1.

(b) As soon as practicable following the appointment of members, the National Adjudicatory Council shall elect a Chair and a Vice Chair from among its members. The Chair and Vice Chair shall have such powers and duties as may be determined from time to time by the National Adjudicatory Council. The Chair also shall serve as a Director of the NASD Regulation Board and a Governor of the NASD Board for a one-year term as provided in the By-Laws and Restated Certificate of Incorporation of the NASD and these By-Laws. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair or Vice Chair from such position at any time for refusal, failure, neglect, or inability to discharge his or her duties.

Nomination Process

Sec. 5.3 (a) Each Regional Nominating Committee shall nominate an Industry member for consideration by the National Nominating Committee as provided in Article VI and subsection (b) of this Section.

(b) The Secretary of NASD Regulation shall collect from each nominee for the office of member of the National Adjudicatory Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public member, and the Secretary shall certify to the National Nominating Committee each nominee's classification. After appointment to the National Adjudicatory Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such classification.

Term of Office

Sec. 5.4 (a) Except as otherwise provided in this Article, each National Adjudicatory Council member shall hold office for a term of two years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) In 1998, each National Adjudicatory Council member shall hold office for a term of one year or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(c) Beginning in January 1999 and thereafter, the National Adjudicatory Council shall be divided into two classes. The term of office of those of the first class shall expire in January 2000, and the term of office of those of the second class shall expire one year thereafter. Beginning in January 2000, members shall be appointed for term of two years to replace those whose terms expire.

(d) Beginning in 2000, no member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

Resignation

Sec. 5.5 A member of the National Adjudicatory Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 5.6 Any or all of the members of the National Adjudicatory Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Disqualification

Sec. 5.7 Notwithstanding Section 5.4, the term of office of a National Adjudicatory Council member shall terminate immediately upon a determination by the Board, by a majority vote, that: (a) the member no longer satisfies the classification (Industry, Non-Industry, or Public member) for which the member was elected; and (b) the member's continued

service as such would violate the compositional requirements of the National Adjudicatory Council set forth in Section 5.2. If the term of office of a National Adjudicatory Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the National Adjudicatory Council shall not be deemed to be in violation of Section 5.2 by virtue of such vacancy.

Filling of Vacancies

Sec. 5.8 If a position on the National Adjudicatory Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the Board shall appoint a person satisfying the classification (Industry, Non-Industry, or Public member) for the position as provided in Section 5.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 5.9 At all meetings of the National Adjudicatory Council, a quorum for the transaction of business shall consist of a majority of the National Adjudicatory Council, including not less than 50 percent of the Non-Industry members. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Meetings

Sec. 5.10 The members of the National Adjudicatory Council may participate in a meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Article VI

National Adjudicatory Council Regional Nominations for Industry Members

Establishment of Regions

Sec. 6.1 The Board shall establish boundaries for geographical regions within the United States for the purpose of nominating candidates for membership on the National Adjudicatory Council to the National Nominating Committee. The Board may make changes from time to time in the number or boundaries of the regions as the Board deems necessary or

appropriate in accordance with Article V, Section 5.2(a). The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new region configuration in the event of a change in the number or boundaries of the regions.

Composition

Sec. 6.2 (a) A Regional Nominating Committee shall be elected for each region designated by the Board under Section 6.1. Each District Nominating Committee for a district located in the region shall elect two District Committee members from the district to serve on the Regional Nominating Committee. If a region shall consist of one district, the District Nominating Committee for the district shall elect four District Committee members from the district to serve on the Regional Nominating Committee.

(b) In the event of the refusal, failure, neglect, or inability of a member of a Regional Nominating Committee to discharge his or her duties, the Regional Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the Regional Nominating Committee then in office and declare the member's position vacant. The Regional Nominating Committee shall notify the Regional Nominating Committee member of his or her removal within seven days after the vote. The member's position shall be filled pursuant to Section 6.4. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the Regional Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the Regional Nominating Committee.

Term of Office

Sec. 6.3 Each regularly elected member of a Regional Nominating Committee shall hold office for a term of two years, or until a successor is elected and qualified, or until death, resignation, or removal. A member of a Regional Nominating Committee may not serve more than three consecutive terms.

Filling of Vacancies

Sec. 6.4 In the event of a vacancy on a Regional Nominating Committee caused by the departure of a member prior to the expiration of the member's term of office, the District Nominating Committee that elected the member

shall appoint by majority vote another member of the District Committee to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs pursuant to this Article.

Meetings

Sec. 6.5 Meetings of a Regional Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each Regional Nominating Committee in its discretion may determine. A quorum of a Regional Nominating Committee shall consist of a majority of its members, and any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a Regional Nominating Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the Regional Nominating Committee.

Election of Officers

Sec. 6.6 Following the annual election of members of the Regional Nominating Committees pursuant to this Article, each Regional Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.

Expenses

Sec. 6.7 Funds to meet the regular expenses of each Regional Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to Chair

Sec. 6.8 On or before August 1, 1998, the Secretary of NASD Regulation shall send a written notice to the Chair of each Regional Nominating Committee to initiate the process for nominating an individual to represent the region on the National Adjudicatory Council for a term of office of one or two years, as determined by the Board, beginning in 1999. On or before August 1, 1999, and annually thereafter, the Secretary of NASD Regulation shall send a written notice to the chair of a Regional Nominating Committee if the term of office of the National Adjudicatory Council member representing the region shall expire in the next calendar year. The notice shall describe the

nomination procedures for filling the office.

Solicitation of Candidates

Sec. 6.9 NASD Regulation staff shall provide the Regional Nominating Committee with a description of the NASD membership in the region. The Regional Nominating Committee shall identify and solicit candidates to nominate to the National Nominating Committee for the office of National Adjudicatory Council member. The Regional Nominating Committee Chair shall send a written notice of the upcoming nomination to the Executive Representative and each branch office of the NASD members in the region and request that such NASD members submit names of candidates to the Regional Nominating Committee or the Secretary of NASD Regulation for consideration.

Secretary's Notice to NASD Members

Sec. 6.10 The Secretary of NASD Regulation shall send a written notice to NASD members in the region describing the nomination procedures.

Regional Nominating Committee Candidate

Sec. 6.11 The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD Regulation staff and shall propose one or more candidates for nomination to the National Nominating Committee. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.

Notice of Regional Nominating Committee Candidate

Sec. 6.12 The Regional Nominating Committee shall send to the Executive Representatives and branch offices of the NASD members in the region a written notice of the name of the candidate or candidates the Regional Nominating Committee proposes for nomination to the National Nominating Committee.

Designation of Additional Candidates

Sec. 6.13 If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD Regulation within 14 calendar days after the mailing date of the Regional Nominating Committee's notice under Section 6.12.

The Regional Nominating Committee Chair or the Secretary of NASD Regulation shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."

List of NASD Members Eligible to Vote

Sec. 6.14 (a) The Secretary of NASD Regulation shall mail a list of all NASD members eligible to vote in the region and their Executive Representatives to the additional candidate immediately following receipt of the additional candidate's notice by the Regional Nominating Committee Chair or the Secretary of NASD Regulation.

(b) An NASD member that has its principal office, one or more registered branch offices, or a principal office and one or more registered branch offices in the region shall be eligible to cast one vote on the nomination through the NASD member's Executive Representative.

Requirement for Petition Supporting Additional Candidate

Sec. 6.15 An additional candidate shall be proposed for nomination if a petition signed by at least ten percent of the NASD members eligible to vote in the region is filed with the Regional Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 6.14. Only an Executive Representative may sign a petition on behalf of an NASD member.

Uncontested Nomination

Sec. 6.16 If the Regional Nominating Committee proposes one candidate for nomination and no additional candidate is proposed for nomination pursuant to Section 6.15, the Regional Nominating Committee shall nominate its candidate to the National Nominating Committee.

Notice of Contested Nomination

Sec. 6.17 If the Regional Nominating Committee proposes more than one candidate for nomination, or if an additional candidate is proposed for nomination pursuant to Section 6.15, the Regional Nominating Committee shall send a written notice to the Executive Representatives of the NASD members eligible to vote in the region announcing the names of the candidates and describing contested nomination procedures.

Administrative Support

Sec. 6.18 The Secretary of NASD Regulation shall designate a district office in the region to provide

administrative support to all candidates by sending to NASD members eligible to vote in the region up to two mailings of materials prepared by the candidates. NASD Regulation shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinion of the candidate. The candidate shall provide a copy of such material for each member of the NASD in the region. A candidate proposed for nomination by the Regional Nominating Committee may identify himself or herself as such in his or her materials. Any candidate may send additional mailings to NASD members at the candidate's own expense. Except as provided in this Article, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, the National Adjudicatory Council, and NASD Regulation staff shall not provide any other administrative support to a candidate for the nomination under this Article or any candidate in a contested election conducted under Article VII of the NASD By-Laws.

Ballots

Sec. 6.19 With the assistance of the Secretary of NASD Regulation and an Independent Agent, the Regional Nominating Committee shall prepare a ballot with the name or names of its candidate and any additional candidates proposed for nomination pursuant to Section 6.15. The ballot shall list the candidates in alphabetical order and shall identify the candidate or candidates proposed for nomination by the Regional Nominating Committee. The Regional Nominating Committee shall send a ballot to the Executive Representative of each NASD member eligible to vote in the region. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than 30 and no more than 45 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 6.20 Eligibility to vote on a regional nomination shall be based on the NASD's membership records as of a date designated by the Secretary of NASD Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD Regulation shall prepare a list of NASD members eligible to vote in the region and their Executive Representatives,

which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. 6.21 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the NASD member's address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 6.22 After the voting period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 6.19. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to a specified district office in the region all ballots timely received. Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the region and their Executive Representatives as prepared by the Secretary of NASD Regulation under Section 6.20. The Secretary of NASD Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 6.23 The Independent Agent shall set aside a ballot if: (a) The ballot is received from an NASD member eligible to vote in the region and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 6.20, and the Secretary of the NASD has not received proper

notice of a change in Executive Representative pursuant to the NASD By-Laws; or (b) two or more properly executed ballots are received from an NASD member eligible to vote in the region. If the Independent Agent determines that the ballots set aside are material to the outcome of the nomination, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send proper written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 6.24 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exists:

- (a) The ballot is not signed by the Executive Representative (unless Section 6.23 applies);
- (b) A vote is not indicated on the ballot; or
- (c) A vote for more than one candidate is indicated on the ballot.

Certification of Nomination

Sec. 6.25 Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate. The candidate receiving the largest number of votes cast in the region shall be declared the nominee from the region and the Regional Nominating Committee shall nominate such candidate to the National Nominating Committee. In the event of a tie, there shall be a run-off vote for the nomination. The Regional Nominating Committee shall send a written certification of the nomination results to the National Nominating Committee. The certification shall state the number of votes received by each candidate and the number of ballots set aside.

Rejection of Regional Nominating Committee Nominee

Sec. 6.26 If the National Nominating Committee rejects the nominee of the Regional Nominating Committee, the Regional Nominating Committee shall repeat the nomination procedures in Section 6.9 through Section 6.25.

Extension of Time and Additional Procedures

Sec. 6.27 The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for nominations under this Article.

Article [IV] VII

Officers, Agents, and Employees

Officers

Sec. [4.1]7.1 The Board [of Directors] shall elect the officers of [the Corporation] NASD Regulation, which shall include a President, a Secretary, and such [for] other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to: Executive Vice[-] President, Senior Vice [-]President, Vice [-]President, General Counsel, [Secretary] and Treasurer of [the Corporation] NASD Regulation. All such officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board [of Directors]. The terms of office of such officers shall be at the pleasure of the Board [of Directors], which by affirmative vote of a majority of the [members] Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of said offices, except the offices and duties of President and Vice President or of President and Secretary. None of the officers, except the President, need be [directors of the Corporation] Directors of NASD Regulation.

Absence of the President

Sec. 7.2 In the case of the absence or inability to act of the President of NASD Regulation, or in the case of a vacancy in such office, the Board may appoint its Chair or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

Sec. [4.2]7.3 In addition to the officers, [the Corporation] NASD Regulation may employ such agents and employees as the Board [of Directors] may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board [of Directors], the President, or any officer designated by the Board [of Directors,] may from time to time determine. [The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any agent or employee of the Corporation.] Agents and employees of NASD Regulation shall be under the supervision and control of the officers of the NASD Regulation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Delegation of Duties of Officers

Sec. [4.3]7.4 The Board [of Directors] may delegate the duties and powers of any officer of [the Corporation] NASD Regulation to any other officer or to any [director] Director for a specified period of time and for any reason that the Board [of Directors] may deem sufficient.

Resignation and Removal of Officers

Sec. [4.4]7.5 (a) Any officer may resign at any time upon written notice of resignation to the Board [of Directors], the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer[, agent or employee of the Corporation] of NASD Regulation may be removed, with or without cause, by resolution adopted by a majority of the [directors] Directors then in office at any regular or special meeting of the Board [of Directors] or by a written consent signed by all of the [directors] Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, [agent, or employee,] if any, with [the Corporation] NASD Regulation.

Bond

Sec. [4.5]7.6 [The Corporation] NASD Regulation may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

[Compensation of Board and Committee Members

Sec. 4.6 The Board of Directors may provide for reasonable compensation of the Chairman of the Board, the Directors, and the members of any committee of the Board or any District Committee from the Corporation. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Corporation.]

Article VIII

District Committees and District Nominating Committees

Establishment of Districts

Sec. 8.1 The Board shall establish boundaries for districts within the United States to assist NASD Regulation in administering its affairs in a manner that is consistent with applicable law, the Restated Certificate of Incorporation, these By-Laws, the Delegation Plan, and the Rules of the Association. The Board may make changes from time to time in the number or boundaries of the districts as it deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new district configuration in the event of a change in the number or boundaries of the districts.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall consist of no fewer than five and no more than 20 members, unless otherwise provided by resolution of the Board. Each District Committee member shall be employed in the office of an NASD member eligible to vote in the district. A District Committee shall determine the number of its members to be elected each year. Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with the Rules of the Association. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor, in such manner as they deem appropriate, to educate NASD members and other brokers and dealers in their respective districts as to the objects, purposes, and work of the NASD, NASD Regulation, and Nasdaq in order to foster NASD members' interest and cooperation.

(b) In the event of the refusal, failure, neglect, or inability of a member of a District Committee to discharge his or her duties, or for any cause affecting the

best interests of NASD Regulation, the sufficiency of which shall be decided by the District Committee, the District Committee may remove the member by the affirmative vote of two-thirds of the members of the District Committee then in office and declare the member's position vacant. The District Committee shall notify the District Committee member of his or her removal within seven days after the vote. The member's position shall be filled pursuant to Section 8.4. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified of the removal. The Board may affirm, reverse, or modify the determination of the District Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Committee.

Term of Office of District Committee Members

Sec. 8.3 Each regularly elected member of a District Committee shall hold office for a term of three years, or until a successor is elected and qualified, or until death, resignation, or removal. A member of a District Committee may not serve more than two consecutive terms.

Filling of Vacancies on District Committees

Sec. 8.4 In the event of a vacancy on a District Committee caused by the departure of a Committee member prior to the expiration of the member's term of office, the District Committee shall appoint by majority vote a representative of an NASD member eligible to vote in the district to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs. Following the election, the newly elected Committee member shall serve only the duration of the departed Committee member's term.

Meetings of District Committees

Sec. 8.5 Meetings of a District Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each District Committee in its discretion may determine. A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a District Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall

constitute the action of the Committee. Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee.

Election of District Officers

Sec. 8.6 Following the annual election of members of the District Committees pursuant to this Article, each District Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws, and shall prescribe their powers and duties.

Advisory Council

Sec. 8.7 (a) The Chairs of the District Committees, elected pursuant to Section 8.6, shall constitute an Advisory Council to the Board.

(b) The Advisory Council shall be advised of and entitled to attend such meetings of the Board as the Board may designate for such Advisory Council's attendance, and the Board shall designate at least one such meeting annually. The Advisory Council shall not be entitled to vote at meetings of the Board.

Expenses of District Committees

Sec. 8.8 Funds to meet the regular expenses of each District Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five members, unless the Board by resolution increases a District Nominating Committee to a larger number. Each member of a District Nominating Committee shall be employed in the office of an NASD member eligible to vote in the district, but shall not be a member of the District Committee. A District Nominating Committee shall include a majority of persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the NASD Board, and shall include at least one current or former Director or Governor.

(b) In the event of the refusal, failure, neglect, or inability of a member of a District Nominating Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the District

Nominating Committee, the District Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the District Nominating Committee then in office and declare the member's position vacant. The member's position shall be filled pursuant to Section 8.11. The District Nominating Committee shall notify the District Nominating Committee member of his or her removal within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the District Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Nominating Committee.

Term of Office of District Nominating Committee Members

Sec. 8.10 Each regularly elected member of a District Nominating Committee shall hold office for a term of one year, and until a successor is elected and qualified, or until death, resignation, or removal. A member of a District Nominating Committee may not serve more than two consecutive terms.

Filling of Vacancies for District Nominating Committees

Sec. 8.11 In the event of a vacancy on a District Nominating Committee caused by the departure of a Committee member prior to the expiration of the member's term of office, the District Nominating Committee shall appoint by majority vote a representative of an NASD member eligible to vote in the district to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs pursuant to this Article.

Meetings of District Nominating Committees

Sec. 8.12 Meetings of a District Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each District Nominating Committee in its discretion may determine. A quorum of a District Nominating Committee shall consist of a majority of its members, and any action taken by a majority of the entire Committee at any meeting, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a District Nominating Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a

majority of the Committee shall constitute the action of the Committee. Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Nominating Committee.

Election of District Nominating Committee Officers

Sec. 8.13 Following the annual election of members of the District Nominating Committees pursuant to this Article, each District Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws, and shall prescribe their powers and duties.

Expenses of District Nominating Committees

Sec. 8.14 Funds to meet the regular expenses of each District Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to Chair

Sec. 8.15 On or before May 1 of each year, the Secretary of NASD Regulation shall send a written notice to the Chair of each District Nominating Committee and each District Committee identifying the members of the District Nominating Committee and the District Committee whose terms of office shall expire in the next calendar year. The notice shall describe election procedures for filling the offices.

Solicitation of Candidates

Sec. 8.16 NASD Regulation staff shall provide the District Nominating Committee with a description of the NASD membership in the district. The District Nominating Committee shall identify and solicit candidates to nominate for the vacancies on the District Committee and the District Nominating Committee. The District Nominating Committee Chair shall send a written notice of the upcoming election to the Executive Representative and each branch office of the NASD members in the district and request that such NASD members submit names of candidates to the District Nominating Committee or the District Director for consideration.

Secretary's Notice to NASD Members

Sec. 8.17 The Secretary of NASD Regulation shall send a written notice to NASD members in the district describing the election procedures.

District Nominating Committee Slate

Sec. 8.18 (a) The District Nominating Committee shall review the background of proposed candidates and the description of the NASD membership provided by NASD Regulation staff and shall nominate a slate of candidates for the election. The slate shall include one or more candidates for each vacancy. In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and all classes and types of NASD members engaged in the investment banking or securities business within the district. In nominating candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

(b) A District Nominating Committee shall not nominate an incumbent member of the District Committee to succeed himself or herself unless the District Nominating Committee first takes appropriate action by a written ballot of the entire NASD membership within the district to ascertain that such nomination is acceptable to a majority of the NASD members in the district, unless the incumbent member of the District Committee is serving pursuant to the provisions of Section 8.4. A District Nominating Committee may not nominate more than two incumbent members of the District Nominating Committee to succeed themselves.

Certification of Nomination

Sec. 8.19 The District Nominating Committee shall certify to the District Committee each candidate nominated by the District Nominating Committee and the office to which the candidate is nominated. Within five calendar days after the certification, the District Committee shall send to the Executive Representatives of NASD members in the district a copy of the certification.

Designation of Additional Candidates

Sec. 8.20 If an officer, director, or employee of an NASD member who meets the qualifications of Section 8.2 is not nominated by the District Nominating Committee and wants to be considered for a vacancy on the District Committee or the District Nominating

Committee, he or she shall send a written notice to the District Director within 14 calendar days after the mailing date of the certification to the Executive Representatives pursuant to Section 8.19. The District Director shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."

List of NASD Members Eligible to Vote

Sec. 8.21 (a) The Secretary of NASD Regulation shall provide a list of all NASD members eligible to vote in the district and their Executive Representatives to the additional candidate immediately following receipt of the additional candidate's notice by the District Director.

(b) An NASD member that has its principal office, one or more registered branch offices, or its principal office and one or more registered branch offices in the district shall be eligible to cast one vote through the NASD member's Executive Representative for each vacancy to be filled in the election.

Requirement for Petition Supporting Additional Candidate

Sec. 8.22 An additional candidate shall be nominated if a petition signed by at least ten percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 8.21. Only an Executive Representative may sign a petition on behalf of an NASD member.

Uncontested Election

Sec. 8.23 If the District Nominating Committee nominates one candidate for each vacancy and no additional candidate is nominated pursuant to Section 8.22, the candidates nominated by the District Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board.

Notice of Contested Election

Sec. 8.24 If the District Nominating Committee nominates more than one candidate for a vacancy, or if an additional candidate is nominated pursuant to Section 8.22, the election shall be considered a contested election. The District Committee shall send a notice to the Executive Representatives of the NASD members eligible to vote in the district announcing the names of the candidates and the office to which each

candidate is nominated and describing contested election procedures.

Administrative Support

Sec. 8.25 The District Office shall provide administrative support to all candidates by sending to NASD members eligible to vote in the district up to two mailings of materials prepared by the candidates. NASD Regulation shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinion of the candidate. The candidate shall provide a copy of the material for each member of the NASD in the district. Candidates nominated by the District Nominating Committee may identify themselves as such in their materials. Any candidate may send additional mailings at the candidate's own expense. Except as provided in this Article, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, and NASD Regulation staff shall not provide any other administrative support to a candidate in the election.

Ballots

Sec. 8.26 With the assistance of the Secretary of NASD Regulation and an Independent Agent, the District Nominating Committee shall prepare a ballot with the names of the District Nominating Committee's candidates and any additional candidate nominated pursuant to Section 8.22 and the office to which each candidate is nominated. The ballot shall list the candidates in alphabetical order and shall identify the candidates nominated by the District Nominating Committee. The District Nominating Committee shall send a ballot to the Executive Representative of each NASD member eligible to vote in the district. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than 30 and no more than 45 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 8.27 Eligibility to vote in a district election shall be based on the NASD's membership records as of a date selected by the Secretary of NASD Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD Regulation shall prepare a list of NASD members eligible

to vote in the district and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. 8.28 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 8.29 After the voting period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 8.26. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to the district office all ballots timely received. Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the district and their Executive Representatives as prepared by the Secretary of NASD Regulation pursuant to Section 8.27. The Secretary of NASD Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 8.30 The Independent Agent shall set aside a ballot if: (a) The ballot is received from an NASD member eligible to vote in the district and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared

under Section 8.27, and the Secretary of the NASD has not received proper notice of a change in Executive Representative pursuant to the NASD By-Laws; or (b) if two or more properly executed ballots are received from an NASD member eligible to vote in the district. If the Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.31 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exist:

- (a) the ballot is not signed by the Executive Representative (unless Section 8.30 applies);
- (b) a vote is not indicated on the ballot; or
- (c) the ballot indicates votes for more candidates than there are vacancies for an office.

Certification of Election

Sec. 8.32 Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Committee. The candidates for the office of member of the District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Nominating Committee. In the

event of a tie, there shall be a run-off election. Each District Committee shall send a written certification of the election results to the Board. The certification shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.33 The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Article IX

Compensation

Compensation of Board, Council, and Committee Members

Sec. 9.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, National Adjudicatory Council members, and the members of any committee of the Board or any District Committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of NASD Regulation.

Article X

Indemnification

Indemnification of Directors, Officers, Employees, Agents, National Adjudicatory Council and Committee Members

Sec. 10.1 (a) NASD Regulation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of NASD Regulation or a National Adjudicatory Council or committee member, or is or was a Director, officer, or employee of NASD Regulation who is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

- (i) Any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of NASD Regulation)

against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) Any threatened, pending, or completed action or suit by or in the right of NASD Regulation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) NASD Regulation shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) NASD Regulation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of NASD Regulation or is or was an agent of NASD Regulation who is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) NASD Regulation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by NASD Regulation to an agent or non-officer employee if a determination is

reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) Acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of NASD Regulation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to NASD Regulation.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, National Adjudicatory Council or committee member, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), NASD Regulation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) NASD Regulation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received

by NASD Regulation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, NASD Regulation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. 10.2 NASD Regulation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, National Adjudicatory Council or committee member, employee, or agent of NASD Regulation, or is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not NASD Regulation would have the power to indemnify such person against such liability hereunder.

Article [VI] XI

Capital Stock

Sole Stockholder

Sec. 11.1 The NASD shall be the sole stockholder of the capital stock of NASD Regulation.

Certificates

Sec. [6.1]11.2 [Each] The stockholder [in the Corporation] shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in [the Corporation] NASD Regulation owned by [such] the stockholder.

Signatures

Sec. [6.2]11.3 (a) Certificates for shares of capital stock of [the Corporation] NASD Regulation shall be signed in the name of [the Corporation] NASD Regulation by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board [of Directors]. Such certificates may be sealed with the corporate [Seal] seal of [the Corporation] NASD Regulation or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [the Corporation] NASD Regulation or its employee, or by a registrar other

than [the Corporation] NASD Regulation or its employee, any other signature on the certificate may be a facsimile. In [case] the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall [have ceased] cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [the Corporation] NASD Regulation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. [6.3]11.4 (a) A record of all certificates for capital stock issued by [the Corporation] NASD Regulation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board [of Directors]. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates that have been canceled, the date of cancellation thereof.

(b) [The Corporation] NASD Regulation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Except as otherwise required by applicable law, [the Corporation] NASD Regulation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [the Corporation] NASD Regulation shall have express or other notice thereof.

Transfers of Stock

Sec. [6.4]11.5 (a) The Board [of Directors] may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for [share] shares of capital stock of [the Corporation] NASD Regulation. The Board [of Directors] may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [the Corporation] NASD Regulation only upon delivery to [the Corporation] NASD Regulation or

its transfer agent of: (i) A written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing[.]; (ii) the certificate for the shares of capital stock being transferred[.]; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. [6.5]11.6 Each certificate for capital stock surrendered to [the Corporation] NASD Regulation for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to [Sec. 6.6] Section 11.7 until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. [6.6]11.7 In the event that any certificate for shares of capital stock of [the Corporation] NASD Regulation shall be mutilated, [the Corporation] NASD Regulation shall issue a new certificate in place of such mutilated certificate. In [case] the event that any such certificate shall be lost, stolen, or destroyed [the Corporation] NASD Regulation may, in the discretion of the Board [of Directors] or a committee [designated] appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board [of Directors] or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or [his] such owner's representatives, to furnish to [the Corporation] NASD Regulation a bond with an acceptable surety or sureties and in such sum as [will] shall be sufficient to indemnify [the Corporation] NASD Regulation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board [of Directors], it is proper to do so.

Fixing of Record Date

Sec. [6.7]11.8 The Board may fix a record date in accordance with Delaware law. [(a) In order that the Corporation may determine the stockholders entitled to notice of or to

vote at any meeting of stockholders or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or to exercise any rights with respect to any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, pursuant to and in accordance with Section 213 of the General Corporation Law of the State of Delaware. Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent, or to exercise such rights with respect to any such change, conversion or exchange of stock, or to participate in any such action, notwithstanding the transfer of any stock on the books of the Corporation after any record date so fixed.]

[(b) If no record date is fixed by the Board of Directors:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the first written consent is expressed; and

(iii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.]

[(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.]

Article [VII] XII

Miscellaneous Provisions

Corporate Seal

Sec. [7.1]12.1 The seal of [the Corporation] NASD Regulation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board [of Directors], the name of [the Corporation] NASD Regulation, the year of its incorporation, and the words "Corporate Seal" and "Delaware[']". The seal may be used by causing it to be affixed or impressed, or

a facsimile thereof may be reproduced or otherwise used in such manner as the Board [of Directors] may determine.

Fiscal Year

Sec. [7.2]12.2 The fiscal year of [the Corporation] NASD Regulation shall begin on the [1st] first day of January in each year, or such other month as the Board [of Directors] may determine by resolution.

Waiver of Notice

Sec. [7.3]12.3 (a) Whenever notice is required to be given by law, the Restated Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholders, directors] stockholder, Directors, or members of a committee of [directors] Directors need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec. [7.4]12.4 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [the Corporation] NASD Regulation by such officer or officers or person or persons[,] as the Board [of Directors], or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board [of Directors], any committee given specific authority in the premises by the Board [of Directors], or any committee given authority to exercise generally the powers of the Board [of Directors] during intervals between meetings of the Board [of Directors], may authorize any officer, employee, or agent, in the name of and on behalf of [the Corporation] NASD Regulation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental

authority, may be executed in the name of [the Corporation] NASD Regulation by any principal officer or subordinate officer of [the Corporation] NASD Regulation, or, to the extent designated for such purpose from time to time by the Board [of Directors], by an employee or agent of [the Corporation] NASD Regulation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. [7.5]12.5 Any records maintained by [the Corporation] NASD Regulation in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article [VIII] XIII

Amendments; Emergency By-Laws

By [Stockholders] Stockholder

Sec. [8.1]13.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of [stockholders] the stockholder, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec. [8.2]13.2 To the extent permitted by the Restated Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board [of Directors].

Emergency By-Laws

Sec. [8.3]13.3 The Board [of Directors] may adopt emergency By-Laws subject to repeal or change by action of the [stockholders] stockholder that shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [the Corporation] NASD Regulation conducts its business or customarily holds meetings of the Board [of Directors] or stockholders] or stockholder, any catastrophe, or other emergency condition, as a result of which a quorum of the Board [of Directors] or a committee thereof cannot readily be

convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary [for] under the circumstances of the emergency.

* * * * *

By-Laws of the NASDAQ Stock Market, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "Board" means the Board of Directors of Nasdaq;

(c) "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(d) "Commission" means the Securities and Exchange Commission;

(e) "day" means calendar day;

(f) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

(g) "Delaware law" means the General Corporation Law of the State of Delaware;

(h) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(i) "Director" means a member of the Board, excluding the Chief Executive Officer of the NASD;

(j) "Industry Director" or "Industry member" means a Director (excluding the President) or National Listing and Hearing Review Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more

than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(k) "NASD" means the National Association of Securities Dealers, Inc.;

(l) "Nasdaq" means The Nasdaq Stock Market, Inc.;

(m) "Nasdaq Listing and Hearing Review Council" means a body appointed by the Board pursuant to Article V of these By-Laws;

(n) "NASD Board" means the NASD Board of Governors;

(o) "NASD Regulation" means NASD Regulation, Inc.;

(p) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(q) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President) or National Listing and Hearing Review Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

(r) "person associated with a member" or "associated person of a member" means: (1) A natural person registered under the Rules of the Association; or (2) a sole proprietor,

partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

(s) "Public Director" or "Public member" means a Director or National Listing and Hearing Review Council or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq; and

(t) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article [I] II

Offices

Location

Sec. [1.1]2.1 The address of the registered office of [the Corporation] Nasdaq in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange [St.,] Street, Wilmington, [DE] Delaware 19801. [The Corporation] Nasdaq also may [also] have offices at such other places both within and without the State of Delaware as the Board [of Directors] may from time to time designate or the business of [the Corporation] Nasdaq may require.

Change of Location

Sec. [1.2]2.2 In the manner permitted by law, the Board [of Directors] or the registered agent may change the address of [the Corporation's] Nasdaq's registered office in the State of Delaware and the Board [of Directors] may make, revoke, or change the designation of the registered agent.

Article [III] III

Meetings of the [Stockholders]

Stockholder

[Annual Meeting]

Sec. 2.1 The annual meeting of stockholders of the Corporation for the election of Directors and for the transaction of such other business as may properly come before the meeting shall be held on such date, and at such time, and place, within or without the

State of Delaware, as may be fixed, from time to time, by the Board of Directors.]

[Special Meetings]

Sec. 2.2 Special meetings of stockholders of the Corporation, unless otherwise prescribed by law, may be called at any time by the Chair of the Board, by the President or by order of a majority of the Board of Directors. Special meetings of stockholders prescribed by law for the election of directors shall be called by the Board of Directors, the President, or the Secretary. Special meetings of stockholders shall be held at such place within or without the State of Delaware as shall be designated in the notice of meeting.]

[Notice of Meetings]

Sec. 2.3 (a) Whenever stockholders are required or permitted to take any action at a meeting, they shall be given written notice stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes thereof. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, written notice shall be delivered or mailed at least ten but not more than sixty days before such meeting date to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deposited in the United States mail, postage prepaid, directed to each stockholder at the address that appears on the records of the Corporation.]

[(b) When a meeting of stockholders is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If, however, the adjournment is for more than thirty days from the date of the original meeting, or if, after the adjournment, a new record date is set for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in the manner prescribed above in subsection (a).]

[Quorum]

Sec. 2.4 Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority of the outstanding shares of capital stock entitled to vote or act at such a meeting shall constitute a quorum for the transaction of any business. In the absence of a quorum,

the stockholders so present may by majority rule, adjourn any meeting until a quorum shall be present. When a quorum is once present to organize a meeting, the quorum cannot be destroyed by the subsequent withdrawal or revocation of the proxy of any stockholder.]

[Voting]

Sec. 2.5 (a) At any meeting of stockholders, each stockholder as of the record date is entitled to one vote for each such share of stock having voting power, upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, provided that no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest, whether in the stock itself or in the Corporation, sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary of the Corporation.]

[(b) Directors of the Corporation shall be elected by a plurality of the votes cast at a meeting of stockholders pursuant to Sec. 2.5 of these By-Laws. Corporate action other than the election of directors shall be authorized by a majority of the votes cast at a meeting of stockholders, except as otherwise required by law, the Certificate of Incorporation or these By-Laws.]

(c) Upon the demand of any stockholder entitled to vote, the election of directors or a vote on any other matter at a meeting of stockholders shall be by written ballot; otherwise, the method of voting and the manner in which votes are counted at such a meeting shall be discretionary with the presiding officer of the meeting.]

[Presiding Officer and Secretary]

Sec. 2.6 At every meeting of stockholders, the Chair, or in his/her absence, the President, or in his/her absence, the appointee of the meeting, shall preside. The Secretary, or in his/her absence, the appointee of the presiding officer of the meeting, shall act as Secretary of the meeting.]

Action by Consent of Stockholder[s]

Sec. [2.7]3.1 Any action required[,] or permitted by law to be taken at any meeting of *the stockholder* [stockholders] of [the Corporation] *Nasdaq* may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the [holders] *holder* of the outstanding stock [having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of corporate action without a meeting and by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who would be entitled to vote thereon at a meeting].

Article [III] IV

Board of Directors

General Powers

Sec. [3.1]4.1 The property, business, and affairs of [the Corporation] *Nasdaq* shall be managed by *or under the direction of* the Board [of Directors]. The Board [of Directors] may exercise all such powers of [the Corporation] *Nasdaq* and have the authority to perform all such lawful acts as are permitted by law, the *Restated Certificate of Incorporation* [or], these By-Laws, *or the Delegation Plan* for the organization, development, and operation of electronic data processing and communications facilities, including computer hardware and software, for the purposes of: [(i)](a) Supporting the operation, regulation, and surveillance of The Nasdaq Stock Market and other organized securities markets established for trading equity securities, debt securities, derivative instruments, or other financial products that may be developed; [(ii)](b) supporting the efficient clearance and settlement of securities transactions; [(iii)](c) supporting various elements of the national market system pursuant to Section 11A of the [Securities Exchange Act of 1934 ("Exchange Act")] *Act* and the rules thereunder; [(iv)](d) assisting the [National Association of Securities Dealers, Inc.] *NASD* in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the [Exchange] *Act*[,] and [(v)](e) supporting such other initiatives as the Board [of Directors] may deem appropriate. *To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a*

committee appointed pursuant to Section 4.13 or to Nasdaq staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

Sec. [3.2]4.2 [The Board of Directors of the Corporation shall consist of one or more members; the exact number of directors which shall constitute the whole Board of Directors shall be fixed from time to time by resolution adopted by a majority of the whole Board of Directors. After fixing the number of directors constituting the whole Board of Directors, the Board of Directors may, by resolution adopted by a majority of the whole Board of Directors, from time to time change the number of directors constituting the whole Board of Directors.] *The Board shall consist of no fewer than five and no more than eight Directors, the exact number to be determined by resolution adopted by the stockholder of Nasdaq from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of Directors on the NASD Regulation Board. Any new Director position created as a result of an increase in the size of the Board shall be filled as part of the annual election conducted under Section 4.4.*

Qualifications

Sec. [3.3]4.3 Directors need not be stockholders of [the Corporation] *Nasdaq*. *Only Governors of the NASD Board shall be eligible for election to the Board. The President of Nasdaq shall be a Director. The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors plus the President. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.*

Election

Sec. [3.4]4.4 Except as otherwise provided by law [or], these By-Laws, *or the Delegation Plan*, after the first meeting of [the Corporation] *Nasdaq* at which [directors] *Directors* are elected, [directors of the Corporation] *Directors of Nasdaq* shall be elected each year at the annual meeting of [stockholders] *the stockholder*, or at a special meeting called for such purpose in lieu of the annual meeting[, by a plurality of the votes cast at such meeting]. If the annual election of [directors] *Directors* is not held on the date designated [therefore,] *therefor*, the [directors] *Directors* shall cause such election to be held as soon thereafter as convenient.

[Term]

Sec. 3.5 (a) Each director shall hold office for a term of three years or until his successor is duly elected and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, with or without cause, or other reason.]

[(b) The Board of Directors shall be divided into three classes.]

[(c) The President of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, or removal.]

[(d) Except for the President, no Director may serve more than two consecutive terms; provided, however, that if a Director is appointed to fill a term of less than one year, such Director may serve up to two consecutive terms following the expiration of such Director's current term.]

[(e) Each Director chosen to fill newly created directorship shall serve until the next succeeding annual meeting of stockholders.]

Resignation

Sec. [3.6]4.5 Any [director] *Director* may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time [be] is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. [3.7]4.6 Any or all of the [directors] *Directors* may be removed from office at any time, with or without cause, *only* by a majority vote of the [stockholders] *NASD Board*.

Disqualification

Sec. 4.7 *The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) The Director no longer satisfies the classification (Industry, Non-Industry, or Public Director) for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.*

Filling of Vacancies

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. [3.8]4.9 (a) *At all meetings of the Board [of Directors, one-third of the total number of directors shall constitute], unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors. In the absence of a quorum, a majority of the [directors] Directors present may adjourn the meeting until a quorum be present.*

(b) [A director interested in a contract or transaction may be counted in determining the presence of a quorum at a meeting of the Board of Directors which authorizes the contract or transaction.] *Except as provided in Section 4.14(b), the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.*

[(c) The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.]

Regulation

Sec. [3.9]4.10 The Board [of Directors] may adopt such rules, regulations, and requirements for the conduct of the business and management of [the Corporation] *Nasdaq*, not inconsistent with law, the Restated Certificate of Incorporation, these By-Laws, [or the rules and By-Laws of the National Association of Securities Dealers, Inc., as the Board of Directors may deem proper. A member of the Board of Directors] *the Rules of the Association, or the By-Laws of the NASD, as the Board may deem proper.* A Director shall, in the performance of [his or her] *such Director's* duties, be fully protected in relying in good faith upon the books of account or reports made to [the Corporation] *Nasdaq* by any of its officers, [or] by an independent certified public accountant, [or] by an appraiser selected with reasonable care by the Board [of

Directors] or any committee of the Board [of Directors] or by any agent of [the Corporation] *Nasdaq*, or in relying in good faith upon other records of [the Corporation] *Nasdaq*.

Meetings

Sec. [3.10]4.11 (a) An annual meeting of the Board [of Directors] shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of [stockholders] *the stockholder*, no notice of the annual meeting of the Board [of Directors] need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [3.11 of these By-Laws] 4.13.

(b) Regular meetings of the Board [of Directors] may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board [of Directors]. After such determination has been made, notice shall be given in accordance with Section [3.11 of these By-Laws] 4.12.

(c) Special meetings of the Board [of Directors] may be called by the Chair of the Board, [or] by the President, or by at least one-third of the [directors at that time being] *Directors then* in office. Notice of any special meeting of the Board [of Directors] shall be given to each [director] *Director* in accordance with Section [3.11 of these By-Laws.] 4.12.

(d) [Members of the Board of Directors, or any committee designated by the Board of Directors,] *Directors or members of any committee appointed by the Board* may participate in a meeting of the Board [of Directors] or of such committee through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. [3.11]4.12 (a) Notice of any meeting of the Board [of Directors] shall be deemed to be duly given to a [director (i) if] *Director if: (i)* Mailed to the address last made known in writing to [the Corporation] *Nasdaq* by such [director] *Director* as the address to which such notices are to be sent, at least [two] seven days before the day on which such [special] meeting is to be held[, or]; (ii) [if] sent to the [director] *Director* at such address by telegraph, telefax, cable, radio, or wireless, not

later than the day before the day on which such meeting is to be held[.]; or (iii) [if] delivered to the [director] Director personally or orally, by telephone or otherwise, not later than the day before the day on which such [special] meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board [of Directors] need not be given to any [director] Director if waived by that [director] Director in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such [director] Director is present at such meeting, *subject to Article IX, Section 9.3(b)*.

(c) Any meeting of the Board [of Directors] shall be a legal meeting without any prior notice if all [directors] Directors then in office shall be present thereat.

Committees [of the Board of Directors]

Sec. [3.13]4.13 (a) The Board [of Directors] may, by resolution or resolutions adopted by a majority of the whole Board [of Directors, designate], *appoint* one or more committees[, each committee to consist of one or more directors of the Corporation]. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board [of Directors]. The Board [of Directors] may designate one or more [directors] Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not [he, she,] *such member* or [they] *members* constitute a quorum, may unanimously appoint another [member of the Board of Directors] Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board [of Directors, subject, however, to removal, with or without cause, at any time by the vote of a majority of the whole Board of Directors]. *Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such committee member's duties.*

(b) [Any committee, to the extent permitted by law and to the extent provided in the] *The Board may, by resolution or resolutions [creating such committee, shall have and may exercise all the powers and authority of the Board of Directors] adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to Nasdaq by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of [the Corporation,] and Nasdaq to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of [the Corporation] Nasdaq to be affixed to all papers [which] that may require it.*

(c) *Except as otherwise provided by applicable law, no [No such] committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of [the Corporation,] Nasdaq; adopting an agreement of merger or consolidation; recommending to the [stockholders] stockholder the sale, lease, or exchange of all or substantially all [the Corporation's] Nasdaq's property and assets; or recommending to the [stockholders] stockholder a dissolution of [the Corporation] Nasdaq or a revocation of a dissolution. Unless the resolution of the Board [of Directors] expressly so provides, no [such] committee shall have the power or authority to authorize the issuance of stock.*

(d) *The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of Nasdaq between meetings of the Board, and which may authorize the seal of Nasdaq to be affixed to all papers that may require it. The Executive Committee shall consist of*

three or four Directors, including at least one Public Director. The President of Nasdaq shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the President. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(e) *The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of Nasdaq, including recommendations for Nasdaq's annual operating and capital budgets and proposed changes to the rates and fees charged by Nasdaq. The Finance Committee shall consist of three or four Directors. The President of Nasdaq shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.*

[(c)](f) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board [of Directors] when required.

[(d)](g) Unless otherwise provided by [the Board of Directors] *these By-Laws*, a majority of [any such] a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(h) *Upon request of the Secretary of Nasdaq, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of Nasdaq shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of Nasdaq, and shall report immediately to the Secretary any change in such classification.*

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. [3.12]4.14 (a) *A Director or a member of the National Listing and Hearing Review Council or a committee shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or National Listing and Hearing Review Council or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or National Listing and Hearing Review Council or committee member shall recuse himself or herself or shall be disqualified.*

(b) *No contract or transaction between [the Corporation] Nasdaq and one or more of its [directors] Directors or officers, or between [the Corporation] Nasdaq and any other corporation, partnership, association, or other organization in which one or more of its [directors] Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason[, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or the committee thereof which] if: (i) The material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction[, or solely because his, her, or their votes are counted for such purposes if: (i) The material facts pertaining to such director's or officer's relationship or interest and] by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction [are disclosed or are known to the Board of Directors or the committee, and the Board] is entered into, and the Board or committee in good faith [authorizes] ratifies the contract or transaction by the affirmative vote of a majority of the disinterested [directors, even though the disinterested directors be less than a quorum; or (ii)] Directors; or (iii) the material facts pertaining to the [director's] Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholders] stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholders; or (iii) the contract or transaction is fair as to the Corporation*

as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors] stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board [of Directors,] or of a committee that [which] authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between Nasdaq and the NASD or NASD Regulation.

Communication of Views Regarding NASD or NASD Regulation Election or Nomination

Sec. 4.15 *Nasdaq, the Board, any committee, the Nasdaq Listing and Hearing Review Council, and Nasdaq staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to the NASD By-Laws or the NASD Regulation By-Laws. A Director, committee member, or Nasdaq Listing and Hearing Review Council member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, or any committee. Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, any committee, and the Nasdaq staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to the NASD By-Laws or the NASD Regulation By-Laws.*

Action Without Meeting

Sec. [3.14]4.16 *Any action required or permitted to be taken at [any] a meeting of the Board [of Directors or any] or of a committee [thereof] may be taken without a meeting if all Directors or all members of [the Board of Directors or] such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board [of Directors or such committee] or the committee.*

Article V

Nasdaq Listing and Hearing Review Council Appointment and Authority

Sec. 5.1 *The Board shall appoint a Nasdaq Listing and Hearing Review Council. The Nasdaq Listing and Hearing Review Council may be authorized to act for the Board in a*

manner consistent with these By-Laws, the Rules of the Association, and the Delegation Plan with respect to listing decisions. The Nasdaq Listing and Hearing Review Council also shall consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Board may delegate such other powers and duties to the Nasdaq Listing and Hearing Review Council as the Board deems appropriate in a manner not inconsistent with the Delegation Plan.

Number of Members and Qualifications

Sec. 5.2 (a) *The Nasdaq Listing and Hearing Review Council shall consist of no fewer than eight and no more than 11 members, of which not more than 50 percent may be engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. The Nasdaq Listing and Hearing Review Council shall include at least three Non-Industry members.*

(b) *As soon as practicable following the appointment of members, the Nasdaq Listing and Hearing Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Nasdaq Listing and Hearing Review Council. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.*

Nomination Process

Sec. 5.3 *The Secretary of Nasdaq shall collect from each nominee for the office of member of the Nasdaq Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry or Non-Industry member, and the Secretary shall certify to the National Nominating Committee each nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such qualifications or classification.*

Term of Office

Sec. 5.4 (a) *Except as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of two years or until a successor is duly*

appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Nasdaq Listing and Hearing Review Council shall be divided into two classes. The term of office of those of the first class shall expire in January 1999, and the term of office of those of the second class shall expire one year thereafter. Beginning in January 1999, members shall be appointed for a term of two years to replace those whose terms expire.

(c) Beginning in 1999, no member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

Resignation

Sec. 5.5 A member of the Nasdaq Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. 5.6 Any or all of the members of the Nasdaq Listing and Hearing Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Disqualification

Sec. 5.7 Notwithstanding Section 5.4, the term of office of a Nasdaq Listing and Hearing Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, that: (a) The member no longer satisfies the classification (Industry or Non-Industry) for which the member was elected; and (b) the member's continued service as such would violate the compositional requirements of the Nasdaq Listing and Hearing Review Council set forth in Section 5.2. If the term of office of a Nasdaq Listing and Hearing Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Nasdaq Listing and Hearing Review Council shall not be deemed to be in

violation of Section 5.2 by virtue of such vacancy.

Filling of Vacancies

Sec. 5.8 If a position on the Nasdaq Listing and Hearing Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 5.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. 5.9 At all meetings of the Nasdaq Listing and Hearing Review Council, unless otherwise set forth in these By-Laws, a quorum for the transaction of business shall consist of a majority of the Nasdaq Listing and Hearing Review Council, including one Non-Industry member. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Meetings

Sec. 5.10 The members of the Nasdaq Listing and Hearing Review Council may participate in a meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Article VI

Compensation

Compensation of Board, Council, and Committee Members

Sec. 6.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Nasdaq Listing and Hearing Review Council members, and the members of any committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of Nasdaq.

Article [IV] VII

Officers, Agents, and Employees

Principal Officers

Sec. [4.1]7.1 The principal officers of [the Corporation] Nasdaq shall be elected by the Board [of Directors] and shall include a Chair, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board [of Directors]. One person may hold the offices and perform the duties

of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board and the President, need be [directors of the Corporation] *Directors of Nasdaq*.

Election of Principal Officers; Term of Office

Sec. [4.2]7.2 (a) The principal officers of [the Corporation] *Nasdaq* shall be elected annually by the Board [of Directors] at the annual meeting of the Board [of Directors] convened pursuant to Section [3.10(a) of these By-Laws] 4.11(a). Failure to elect any principal officer annually shall not dissolve [the Corporation] *Nasdaq*.

(b) If the Board [of Directors] shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board [of Directors].

(c) Each principal officer shall hold office until [his or her] a successor is duly elected and qualified, or until [his or her earlier] death, resignation, or removal.

Subordinate Officers, Agents, or Employees

Sec. [4.3]7.3 In addition to the principal officers, [the Corporation] *Nasdaq* may have one or more subordinate officers, agents, and employees as the Board [of Directors] may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board [of Directors], the President, or any officer designated by the Board [of Directors], may from time to time determine. [The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any subordinate officer, agent, or employee of the Corporation.] *Agents and employees of Nasdaq shall be under the supervision and control of the officers of Nasdaq, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.*

Delegation of Duties of Officers

Sec. [4.4]7.4 The Board [of Directors] may delegate the duties and powers of any officer of [the Corporation] *Nasdaq* to any other officer or to any [director] *Director* for a specified period of time and for any reason that the Board [of Directors] may deem sufficient.

Resignation and Removal of Officers

Sec. [4.5] 7.5 (a) Any officer may resign at any time upon written notice of resignation to the Board [of Directors], the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer[, agent or employee of the Corporation] of *Nasdaq* may be removed, with or without cause, by resolution adopted by a majority of the [directors] *Directors* then in office at any regular or special meeting of the Board [of Directors] or by a written consent signed by all of the [directors] *Directors* then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, [agent, or employee,] if any, with [the Corporation] *Nasdaq*.

Bond

Sec. [4.6] 7.6 [The Corporation] *Nasdaq* may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Chair of the Board

Sec. [4.7] 7.7 The Chair of the Board shall preside at all meetings of the Board [of Directors] at which [he or she] *the Chair* is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the Chair* from time to time by the Board [of Directors].

President

Sec. [4.8] 7.8 The President shall, in the absence of the Chair of the Board, preside at all meetings of the Board [of Directors] at which [he or she] *the President* is present. The President shall be the [chief executive officer of the Corporation] *Chief Executive Officer of Nasdaq* and shall have general supervision over the business and affairs of [the Corporation] *Nasdaq*. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board [of Directors]. The President shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the President* from time to time by the Board [of Directors].

Vice President

Sec. [4.9] 7.9 *The Board shall elect one or more Vice Presidents.* In the absence or disability of the President or if the office of President [be] *becomes* vacant, the Vice Presidents in the order determined by the Board [of Directors],

or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board [of Directors] at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in [his or her] *such Vice President's* title as the Board [of Directors] may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to [him or her] *such Vice President* from time to time by the Board [of Directors] or the President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

Secretary

Sec. [4.10] 7.10 The Secretary shall act as Secretary of all meetings of [stockholders] *the stockholder* and of the Board [of Directors] at which [he or she] *the Secretary* is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of [the Corporation] *Nasdaq*, and shall have supervision over the care and custody of the corporate records and the corporate seal of [the Corporation] *Nasdaq*. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of [the Corporation] *Nasdaq* under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically [listed] *limited* by a resolution of the Board [of Directors]. The Secretary shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the Secretary* from time to time by the Board [of Directors] or the President.

Assistant Secretary

Sec. [4.11] 7.11 In the absence of the Secretary or in the event of [his or her] *the Secretary's* inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to [him or her] *such Assistant Secretary* from time to time by the Board [of Directors] or the Secretary.

Treasurer

Sec. [4.12] 7.12 The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of [the Corporation] *Nasdaq* and shall cause the funds of [the Corporation] *Nasdaq* to be deposited in the name of [the Corporation] *Nasdaq* in such banks or other depositories as the Board [of Directors] may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of [the Corporation] *Nasdaq*. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board [of Directors]. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to [him] *the Treasurer* from time to time by the Board [of Directors] or the President.

Assistant Treasurer

Sec. [4.13] 7.13 In the absence of the Treasurer or in the event of [his or her] *the Treasurer's* inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to [him or her] *such Assistant Treasurer* from time to time by the Board [of Directors] or the Treasurer.

Article [V] VIII

Indemnification of Directors, Officers, Employees, [and] Agents, *Nasdaq Listing and Hearing Review Council and Committee Members*

Sec. [5.1] 8.1 (a) [The Corporation] *Nasdaq* shall indemnify, and hold harmless, to the fullest extent permitted by *Delaware* law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a [director or] *Director*, officer [of the Corporation], or employee of *Nasdaq* or a *Nasdaq Listing and Hearing Review Council or committee member*, or is or was a [director or] *Director*, officer, or employee of *Nasdaq* who is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other enterprise,], *enterprise, or non-profit entity, including service with respect to employee benefit plans*, is or was a party, or is threatened to be made a party to:

(i) Any threatened, pending, or completed action, suit, or proceeding,

whether civil, criminal, administrative, or investigative (other than an action by or in the right of [the Corporation]) *Nasdaq* against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) Any threatened, pending, or completed action or suit by or in the right of [the Corporation] *Nasdaq* to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such [persons] person in connection with the defense or settlement of such action or suit.

(b) *Nasdaq* shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

[(b)](c) [The Corporation] *Nasdaq* may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an [employee or agent of the Corporation, or] agent of *Nasdaq* or is or was an agent of *Nasdaq* who is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, trust [or other enterprise,], enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described [above] in subsection (a).

[(c)](d) [The Corporation] *Nasdaq* may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition[.]; provided, however, that the payment of expenses incurred by [a director, officer, or employee] such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by [the officer, director, or employee] that person to repay all amounts advanced if it should be ultimately determined that [such] the

person is not entitled to be indemnified under this Section [5.1 or otherwise] or otherwise.

(e) *Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by Nasdaq to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of Nasdaq; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to Nasdaq.*

[(d)] (f) The indemnification provided by this [section] Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled [under any by-law, agreement, vote of stockholders or disinterested directors or otherwise], both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a [director] Director, officer, National Listing and Hearing Review Council or committee member, employee, or agent and shall inure to the benefit of [his or her] such person's heirs, executors, and administrators.

(g) *Notwithstanding the foregoing, but subject to subsection (j), Nasdaq shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.*

[(e)] (h) [The Corporation's] *Nasdaq's* obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other], enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, [or other] enterprise, or non-profit entity.

[(f)](i) Any repeal or modification of the foregoing provisions of this Section [5.1] shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) *If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by Nasdaq, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, Nasdaq shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.*

Indemnification Insurance

Sec. [5.2]8.2 [The Corporation] *Nasdaq* shall have power to purchase and maintain insurance on behalf of any person who is or was a [director] Director, officer, National Listing and Hearing Review Council or committee member, employee, or agent of [the Corporation] *Nasdaq*, or is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other], enterprise, or non-profit entity against any liability asserted against [him or her] such person and incurred by [him or her] such person in any such capacity, or arising out of [his or her] such person's status as such, whether or not [the Corporation] *Nasdaq* would have the power to indemnify [him or her] such person against such liability [under the provisions of this section] hereunder.

Article [VI] IX

Capital Stock

Sole Stockholder

Sec. 9.1 *The NASD shall be the sole stockholder of the capital stock of Nasdaq.*

Certificates

Sec. [6.1]9.2 [Each] The stockholder [in the Corporation] shall be entitled to a certificate or certificates in such form as shall be approved by the Board [of Directors], certifying the number of shares of capital stock in [the Corporation] *Nasdaq* owned by [such] the stockholder.

Signatures

Sec. [6.2]9.3 (a) Certificates for shares of capital stock of [the Corporation] *Nasdaq* shall be signed in the name of [the Corporation] *Nasdaq* by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board [of Directors]. Such certificates may be sealed with the corporate [Seal] seal of [the Corporation] *Nasdaq* or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [the Corporation] *Nasdaq* or its employee, or by a registrar other than [the Corporation] *Nasdaq* or its employee, any other signature on the certificate may be a facsimile. In [case] *the event that* any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall [have ceased] cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [the Corporation] *Nasdaq* with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. [6.3]9.4 (a) A record of all certificates for capital stock issued by [the Corporation] *Nasdaq* shall be kept by the Secretary or any other officer, employee, or agent designated by the Board [of Directors]. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) [The Corporation] *Nasdaq* shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. [The Corporation] *Nasdaq* shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [the Corporation] *Nasdaq* shall have express or other notice thereof.

Transfers of Stock

Sec. [6.4]9.5 (a) The Board [of Directors] may make such rules and regulations as it may deem expedient, not inconsistent with law, the *Restated*

Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for [share] shares of capital stock of [the Corporation] *Nasdaq*. The Board [of Directors] may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [the Corporation] *Nasdaq* only upon delivery to [the Corporation] *Nasdaq* or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing[.]; (ii) the certificate for the shares of capital stock being transferred[.]; and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. [6.5]9.6 Each certificate for capital stock surrendered to [the Corporation] *Nasdaq* for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to [Sec. 6.6. of these By-Laws] *Section 9.7* until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. [6.6]9.7 In the event that any certificate for shares of capital stock of [the Corporation] *Nasdaq* shall be mutilated, [the Corporation] *Nasdaq* shall issue a new certificate in place of such mutilated certificate. In [case] *the event that* any such certificate shall be lost, stolen, or destroyed [the Corporation], *Nasdaq* may, in the discretion of the Board [of Directors] or a committee [designated] *appointed* thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board [of Directors] or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or [his] *the owner's* representatives, to furnish to [the Corporation] *Nasdaq* a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify [the Corporation] *Nasdaq* against any claim that may be made

against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board [of Directors], it is proper to do so.

Fixing of Record [Dates] *Date*

Sec. [6.7]9.8 *The Board may fix a record date in accordance with Delaware law.* [(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or to exercise any rights with respect to any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of any meeting of stockholders, nor more than sixty days prior to any other action. Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent, or to exercise such rights with respect to any such change, conversion or exchange of stock, or to participate in any such action, notwithstanding the transfer of any stock on the books of the Corporation after any record date so fixed.]

[(b) If no record date is fixed by the Board of Directors:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the first written consent is expressed; and

(iii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.]

[(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of

Directors may fix a new record date for the adjourned meeting.]

Article [VII] X

Miscellaneous Provisions

Corporate Seal

Sec. [7.1]10.1 The seal of [the Corporation] *Nasdaq* shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board [of Directors], the name of [the Corporation] *Nasdaq*, the year of its incorporation, and the words "Corporate Seal" and "Delaware[]". The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board [of Directors] may determine.

Fiscal Year

Sec. [7.2]10.2 The fiscal year of [the Corporation] *Nasdaq* shall begin the 1st day of January in each year, or such other month as the Board [of Directors] may determine by resolution.

Waiver of Notice

Sec. [7.3]10.3 (a) Whenever notice is required to be given by law, the *Restated* Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholders, directors] *stockholder*, *Directors*, or members of a committee of [directors] *Directors* need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec. [7.4.]10.4 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [the Corporation] *Nasdaq* by such officer or officers or person or persons[,] as the Board [of Directors], or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board [of Directors], any committee given specific authority in the premises by the Board [of Directors], or any committee given authority to exercise generally the

powers of the Board [of Directors] during intervals between meetings of the Board [of Directors], may authorize any officer, employee, or agent, in the name of and on behalf of [the Corporation] *Nasdaq*, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [the Corporation] *Nasdaq* by any principal officer or subordinate officer of [the Corporation] *Nasdaq*, or, to the extent designated for such purpose from time to time by the Board [of Directors], by an employee or agent of [the Corporation] *Nasdaq*. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. [7.5]10.5 Any records maintained by [the Corporation] *Nasdaq* in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article [VIII] XI

Amendments; Emergency By-Laws

By [Stockholders] *Stockholder*

Sec. [8.1]11.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of [stockholders] by the vote of the holders of not less than a majority of the outstanding shares of stock entitled to vote thereat] *the stockholder*, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec. [8.2]11.2 To the extent permitted by the *Restated* Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board [of Directors] by a resolution adopted by a vote of a majority of the whole Board [of Directors].

Emergency By-Laws

Sec. [8.3]11.3 The Board [of Directors] may adopt emergency By-Laws subject to repeal or change by action of the [stockholders] *stockholder* which shall, notwithstanding any different provision of law, the *Restated* Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [the Corporation] *Nasdaq* conducts its business or customarily holds meetings of the Board [of Directors] or stockholders] *or the stockholder*, any catastrophe, or other emergency condition, as a result of which a quorum of the Board [of Directors] or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary [for] *under the circumstances of the emergency.*

* * * * *

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as "[NASDR] *NASD Regulation*") and The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. Governors, Directors and Committee Members *The terms "Industry Governors," "Non-Industry Governors," "Public Governors," "Industry Directors," "Non-Industry Directors," "Public Directors," "Industry committee members," "Non-Industry committee members," and "Public committee members," as used herein, shall have the meanings set forth in the By-Laws of the NASD, NASD Regulation and Nasdaq, as applicable.*

[The following definitions are applicable to Governors of the NASD, Directors of the Subsidiaries, and Members of Committees of the NASD and the Subsidiaries.]

[1. "Industry" Governors, Directors or Committee Members shall include (a) officers, directors and employees of brokers and dealers and persons who have been employed in any such capacity at any time within the prior three years; and (b) persons who have consulting or employment relationships with or provided professional services

to the Association and persons who have had any such relationship or provided any such services at any time within the prior three years.]

[2. "Non-industry" Governors, Directors or Committee Members shall be (a) Public Governors; (b) officers and employees of issuers of securities listed on The Nasdaq Stock Market or traded in the over-the-counter market; (c) persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to:

(i) Distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (d) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and (e) other individuals who would not be Industry Governors, Directors or Committee Members.]

[3. "Public" Governors, Directors or Committee Members shall be non-industry persons who have no material business relationship with a broker, dealer or the Association.]

B. Functions and Authority of the NASD—The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A. and III.A., the NASD has delegated certain authority and functions to its [subsidiaries] *Subsidiaries*. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the *Securities Exchange Act of 1934* ("Act"), or as set forth in the [articles of incorporation] *Restated Certificate of Incorporation* or the by-laws is hereby reserved, except as expressly delegated to the [subsidiaries] *Subsidiaries*. In addition, the NASD expressly retains the following authority and functions:

1. To exercise overall responsibility for ensuring that the Association's statutory and self-regulatory obligations and functions are fulfilled.

2. To delegate authority to the Subsidiaries to take actions on behalf of the NASD.

3. To elect the Subsidiary Boards of Directors.

4. To review the rulemaking and disciplinary decisions of the

Subsidiaries (See Sections [II.C.] *II.B.* and [III.C.] *III.B.* below).

5. To coordinate actions of the Subsidiary Boards as necessary.

6. To resolve any disputes between the Subsidiaries.

7. To administer common overhead and technology of the Subsidiaries.

8. To administer the Office of Internal Review as provided in [Section I.D.4 below] *the NASD By-Laws*.

9. To manage external Association relations on major policy issues.

10. To direct the Subsidiaries to take action necessary to effectuate the purposes and functions of the Association.

11. *To take action ab initio in an area of responsibility delegated to NASD Regulation in Section II or to Nasdaq in Section III.*

[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 in April of 1997, Governors (except the CEO of NASD) shall be elected by a majority 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 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 may be 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.]

[4. Term of Office

a. Each Governor shall hold office for a term of not more than three years, or until a successor is elected and qualified, or until death, disqualification, resignation, or removal. Except as provided in paragraphs (b) and (c), Governors may not serve more than two consecutive terms of office on any Association Board.

b. The CEO of the NASD shall serve as a member of the NASD Board until a successor is selected and qualified, or until death, resignation, disqualification, or removal.

c. Where a Governor is appointed to fill a term of less than one year, such Governor shall not be precluded from serving two additional terms of office.]

[5. Vacancies

a. If a Governor position becomes vacant before the expiration of the Governor's term of office, the National Nominating Committee shall recommend, and the NASD Board shall

elect by majority vote of the remaining Governors, a person satisfying the criteria for a Governor position of the type (Industry, Non-industry or Public), vacated as defined in Section I.A. above, unless such Governor has a remaining term of office of no more than six months, in which case no replacement will be required.

b. If a Governor no longer satisfies the criteria for the category in which he or she was elected (Industry, Non-industry or Public) and has a remaining term of office of more than six months, such Governor shall be automatically removed from office unless the remaining members of the NASD Board determine otherwise by a majority vote and the failure to remove the Governor does not affect the proportional representation set forth in Section I.C.1. above.]

[D. Audit Committee

1. The Audit Committee shall be a committee of the NASD Board and shall include the following functions:

a. To ensure the existence of adequate controls and the integrity of the financial reporting process of the Association.

b. To recommend to the NASD Board, and to monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD.

c. To direct and oversee all the activities of the Association's internal review function, including but not limited to management's responses to the internal review function.]

[2. Composition: The Audit Committee shall be composed of Four (4) or Five (5) members of the NASD Board, none of whom are officers or employees of the Association. The Committee shall include at least one Public Committee Member who shall serve as Chairperson of the Committee. The Committee shall have no more than two Industry Committee Members. If the Committee shall have Four (4) members it shall have not more than One (1) Industry Committee Member. In the event that the size of the NASD Board shall at any time consist of Eleven (11) or more members, the Audit Committee shall include Two (2) Public Committee Members. In addition, each Subsidiary shall designate a Public Member of its Board as a liaison to the Audit Committee. The Audit Committee may consult with that person on issues relating to the functions of the Subsidiary, but neither the liaison nor any officer or employee of the Association shall serve on the Audit Committee in any voting or non-voting capacity.]

[3. No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company or individual if he or she has a material interest in, or a professional, business or personal relationship with, that member, company or individual or if such participation shall create an appearance of impropriety. Committee members shall consult with the General Counsel of NASD to determine if recusal is necessary. In the event that a member of the Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Committee.]

[4. Office of Internal Review: The Audit Committee shall have exclusive authority: (a) To hire or terminate the Director of Internal Review, (b) to determine the compensation of the Director of Internal Review, and (c) to determine the budget for the Office of Internal Review. The Office of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters it deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.]

[E.]C. Management Compensation Committee

1. The Management Compensation Committee shall be a Committee of the NASD Board and shall have the following functions: To consider and recommend compensation policies, programs, and practices for employees of the Association.

2. Composition: The Management Compensation Committee shall [be composed] *consist* of no fewer than [Four (4)] *four and no more than seven* [or more Members of the NASD Board, equally balanced between Industry and Non-industry]Governors. [If at any time there shall be an odd number of members of the Management Compensation Committee, Non-industry Committee Members shall be in the majority.] *The number of Non-Industry committee members shall equal or exceed the number of Industry committee members. The Chief Executive Officer shall be an ex-officio, non-voting member of the Management Compensation Committee. Each member shall serve a term of office of one year.*

3. *Quorum: At all meetings of the Management Compensation Committee,*

a quorum for the transaction of business shall consist of a majority of the Management Compensation Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

[F.] D. Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A. and III.A. below, the staff, books, records, and premises of the Subsidiaries are the staff, books, records, and premises of the NASD subject to oversight pursuant to the [Securities Exchange Act of 1934 ("Act")] Act, and all officers, directors, employees, and agents of the Subsidiaries are officers [and], directors, employees, and agents of the NASD for purposes of the Act.

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

A. Delegation of Functions and Authority:

1. *Subject to Section I.B.11, [The] the NASD hereby delegates to [the NASDR and the NASDR] NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:*

a. *To establish and interpret rules and regulations and provide exemptions for NASD members including, but not limited to fees [and], membership requirements [and the Code of Arbitration and Mediation Procedure], and arbitration procedures.*

b. *To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) arbitration of disputes among and between NASD members, associated persons and customers, (ii) public and private sale or distribution of securities including underwriting arrangements and compensation, (iii) financial responsibility, (iv) qualifications for NASD membership and association with NASD members, (v) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting members in general and securities listed on The Nasdaq Stock Market and on other markets operated by The Nasdaq Stock Market, (vi) NASD member advertising practices, (vii) administration, interpretation, and enforcement of Association rules, (viii) administration*

and enforcement of Municipal Securities Rulemaking Board ("MSRB") rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, and (ix) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

c. To take necessary or appropriate action to assure compliance with Association policy, Association and MSRB rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

d. To administer programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market.

e. To examine and investigate NASD members and associated persons to determine if they have violated Association or MSRB rules, the federal securities laws, and other laws, rules, and regulations that the Association has the authority to administer, interpret, or enforce.

f. To administer Association enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions.

g. To administer the Association's office of professional hearing officers.

h. To conduct arbitrations, mediations, and other dispute resolution programs.

i. To conduct qualification examinations and continuing education programs.

j. To operate the Central Registration Depository [("CRD")].

k. To determine whether applicants for NASD membership have met the requirements for membership established by the Association.

l. To place restrictions on the business activities of NASD members consistent with the public interest, the protection of investors, and the federal securities laws.

m. To determine whether persons seeking to register as associated persons of NASD members have met such qualifications for registration as may be established by the Association, including whether statutorily disqualified persons will be permitted to associate with particular NASD

members and the conditions of such association.

n. To oversee all District Office activities.

o. To establish the annual budget and business plan for [NASDR] *NASD Regulation*.

p. To determine allocation of [NASDR] *NASD Regulation* resources.

q. To establish and assess fees and other charges on NASD members, persons associated with NASD members, and others using the services or facilities of [NASDR] *NASD Regulation*.

r. To manage external relations on enforcement, regulatory, and other policy issues with Congress, the Securities and Exchange Commission [("SEC")] ("*Commission*"), state regulators, other self-regulatory organizations, business groups, and the public.

s. To establish internal procedures for considering complaints by members, associated persons, and members of the public who request an investigation or disciplinary action by the Association.

t. To operate *Stockwatch* in conjunction with *Nasdaq* pursuant to Section IV.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

[B. Board of Directors

1. Subsequent to January of 1997, the NASDR Board of Directors ("NASDR Board") shall be composed of at least Twenty-one (21) and no more than Twenty-five (25) Directors. The President of NASDR shall be a member of the NASDR Board and the remaining members shall be equally balanced between Industry and Non-industry Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. The NASDR Board shall include Seven (7) representatives of NASD members representing geographical regions defined by the NASDR Board, and at least Three (3) at-large industry representatives. The NASDR Board shall include at least Ten (10) Non-industry Directors, including at least Three (3) Public Directors. In the event that the NASDR Board shall consist of more than Twenty-two (22) Members, at least Four (4) shall be Public Directors. The NASDR Board shall include representatives of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated

NASD member. The CEO of NASD shall be an ex-officio non-voting member of the NASDR Board.]

[2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the NASDR Board.

b. The Seven (7) Industry Members of the NASDR Board shall be nominated by Regional Nominating Committees for consideration by the National Nominating Committee. A Regional Nominating Committee shall consist of equal numbers of members from each district comprising the regions and members shall be selected by the District Committee for that District.

c. Any officer, director or employee of an NASD member who has not otherwise been nominated by the Regional Nominating Committee may seek nomination if the candidate presents duly executed petitions to the Regional Nominating Committee for the appropriate geographical region demonstrating that such candidate has the support of at least ten (10) percent of the NASD members in that region. The Regional Nominating Committee shall submit the names of its nominees and of all the candidates presenting qualifying petitions to the members in that region for nomination by secret ballot. The Regional Nominating Committee shall nominate to the National Nominating Committee the candidate receiving the most votes.

d. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under Section I.C.4. and 5. above.]

[C]B. [NASDR] *NASD Regulation* Board Procedures

[1. Disciplinary Actions—Any disciplinary decision of the Association, including dismissals, may be appealed or called for review pursuant to the Rules of the Association.]

[2. Statutory Disqualification Decisions—Any decision of the NBCC with respect to statutory disqualification may be called for review pursuant to the Rules of the Association.]

[3]1. 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.] *The NASD Board shall review and ratify a rule change adopted by the NASD Regulation Board*

before the rule change becomes the final action of the Association if the rule change: (a) Imposes fees or other charges on persons or entities other than NASD members; (b) raises significant policy issues in the view of the NASD Regulation Board, and the NASD Regulation Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the National Adjudicatory Council. If the [NASDR] NASD Regulation Board does not refer a rule change to the NASD Board for review, the [NASDR] NASD Regulation Board action [will] shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board [its] meeting next following the [NASDR] NASD Regulation 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] NASD Regulation staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the [NASDR] NASD Regulation Board.

[4. Notwithstanding the requirements set forth in paragraph 3 of this Section, the NASD Board may determine it is advisable to call or not call for review any rule change within the 15 calendar day period following the decision of the NASDR Board.]

2. Petitions for Reconsideration

a. If the NASD Regulation Board or NASD Board takes action on a rule change relating to the business and sales practices of NASD members or associated persons or enforcement policies, including policies with respect to fines and other sanctions, and such action is materially inconsistent with the recommendation of the National Adjudicatory Council, the NASD Regulation Board or the NASD Board, as applicable, shall provide written notice of its action to the National Adjudicatory Council within one calendar day.

b. Within two calendar days after receipt of such notice, the National Adjudicatory Council, by majority vote, may petition the NASD Board for reconsideration. Such petition shall be in writing and include a statement explaining in detail why the National Adjudicatory Council believes that the NASD Regulation Board's or NASD Board's action should be set aside.

c. The NASD Executive Committee shall act on a timely and complete petition for reconsideration within three calendar days after its receipt. If the NASD Executive Committee grants reconsideration, the matter shall be

added to the agenda of the next regularly scheduled meeting of the NASD Board. If the NASD Executive Committee denies reconsideration, the NASD Regulation Board's or NASD Board's previous action on the rule shall be final, and staff shall submit the necessary rule filing to the SEC.

[D.] C. Supplemental Delegation Regarding [the Formation of Committees] Committees

[1. The NASDR board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the NASDR Board in carrying out the functions and authority delegated to the NASDR by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the NASDR Board in accordance with procedures established by the NASDR Board.]

[(a) National Business Conduct Committee—A National Business Conduct Committee may be created for the purpose of:

(i) Hearing and deciding appeals of initial disciplinary decisions of the Association.

(ii) Considering and recommending to the NASDR Board policy and rule changes relating to the business and sales practices of NASD members and associated persons.

(iii) Considering and recommending Association enforcement policies, including policies with respect to fines and other sanctions.]

[(b) The NBCC shall be composed of at least Eight (8) members of the NASDR Board equally balanced between Industry and Non-industry Committee Members (including at least one Public Member). If at any time there shall be an odd number of Committee Members, a majority of the Members shall be Non-industry. Each NBCC Member shall be elected to serve a one-year term.]

1. Market Regulation Committee

a. The Market Regulation Committee shall advise the NASD Regulation Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices; advise the NASD Regulation Board in its administration of programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock

Market, the third market for securities listed on a registered exchange, and the over-the-counter market; provide a pool of panelists for those hearing panels that the Chief Hearing Officer or his or her designee determines should include a member of the Market Regulation Committee pursuant to the Rules of the Association; participate in the training of hearing panelists on issues relating to quotations, executions, trade reporting, and trading practices; and review and recommend to the National Adjudicatory Council changes to the Association's Sanction Guidelines.

b. The NASD Regulation Board shall appoint the Market Regulation Committee by resolution. The members of the Market Regulation Committee shall be balanced between Industry and Non-Industry committee members.

c. At all meetings of the Market Regulation Committee, a quorum for the transaction of business shall consist of a majority of the Market Regulation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

[2. Other Committees—With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the by-laws by resolution or resolutions adopted by a majority of the whole NASDR Board.]

2. National Arbitration and Mediation Committee

a. The National Arbitration and Mediation Committee shall have the powers and authority pursuant to the Rules of the Association to advise the NASD Regulation Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Association members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of the Rules of the Association.

b. The NASD Regulation Board shall appoint the National Arbitration and Mediation Committee by resolution. The National Arbitration and Mediation Committee shall consist of no fewer than ten and no more than 25 members. The members of the National

Arbitration and Mediation Committee shall be equally balanced between Industry and Non-Industry committee members.

c. At all meetings of the National Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the National Arbitration and Mediation Committee, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

3. Operations Committee

a. The Operations Committee shall have the following functions:

i. to issue interpretations or rulings with respect to the Uniform Practice Code ("UPC");

ii. to advise the NASD Regulation Board and, where applicable, the Nasdaq Listing and Hearing Review Council, with respect to the clearance and settlement of securities transactions and other financial responsibility and operational matters that may require modifications to the UPC or other Rules of the Association; and

iii. to maintain a Nasdaq Liaison Subcommittee to provide advice to Nasdaq staff on policy making related to the UPC and financial responsibility issues related to The Nasdaq Stock Market or other markets operated by The Nasdaq Stock Market and to issue interpretations or rulings with respect to the application of the UPC to cancellations of new issues, due bills, and similar situations that arise with respect to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

b. The NASD Regulation Board shall appoint the Operations Committee by resolution. The Operations Committee shall have not more than 50 percent of its members directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenues.

III. Delegation to Nasdaq

A. Delegation of Functions and Authority

1. Subject to Section I.B.11., [The] the NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.

b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions.

c. To collect, process, consolidate, and provide to [NASDR] NASD Regulation the information requisite to operation of the surveillance audit trail.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over-the-counter market, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. To develop and adopt rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate, and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non-discriminatory manner.

h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.

i. To develop, adopt, and administer rules governing listing standards applicable to securities traded on The Nasdaq Stock Market and the issuers of those securities.

j. To establish standards for participation in The Nasdaq Stock Market[,] and other markets or systems operated by Nasdaq, and determine in accordance with Association and Nasdaq procedures if: (i) persons seeking to participate in any of such markets and systems have met the standards established for participants;

and (ii) persons participating in any of the markets or systems continue to meet the standards established for participants.

k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.

l. To establish the annual budget and business plan for Nasdaq.

m. To determine allocation of Nasdaq resources.

n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by the Nasdaq Stock Market with Congress, the [SEC] Commission, state regulators, other self-regulatory organizations, business groups, and the public.

o. To operate Stockwatch in conjunction with NASD Regulation pursuant to Section IV.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

[B. Board of Directors

1. Composition—As of January of 1997 the Nasdaq Board of Directors ("Nasdaq Board") shall be composed of at least Eleven (11) and not more than Fifteen (15) Directors. The President of Nasdaq shall be a member of the Nasdaq Board and the remaining Members shall be equally balanced between Industry and Non-industry Directors, including at least two (2) Public Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. In the event that the Nasdaq Board shall consist of more than Twelve (12) Members, at least Three (3) shall be Public Directors. The CEO of NASD shall be an ex-officio non-voting member of the Nasdaq Board.]

[2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the Nasdaq Board.

b. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under I.C.4. and 5. above.]

[C.] B. 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] *Council* ("Listing [Committee] *Council*") within 15 calendar days, or called for review by any member of the Listing [Committee] *Council* within 45 days, as set forth in the [Code of Procedure] *Rules of the Association*. [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] *Listing Council* may be called for review by any member of the NASD Board not later than the *NASD Board* [its] meeting next following the [Nasdaq Board's] *Listing Council's* decision but which is 15 calendar days or more following the decision of the Listing [Committee] *Council* [or the Nasdaq Board]. *Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any listing/delisting decision with the 15 calendar day period following the decision of the Listing Council.* 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] *Council*, [Nasdaq Board] or NASD to the [SEC] *Commission*.

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.] *The NASD Board shall review and ratify a rule change adopted by the Nasdaq Board before the rule change becomes the final action of the Association if the rule change: (a) Imposes fees or other charges on persons or entities other than NASD members or issuers; (b) raises significant policy issues in the view of the Nasdaq Board, and the Nasdaq Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the Nasdaq Listing and Hearing Review Council.* If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action [will] *shall* become the final action of the Association unless called for review by any member of the NASD Board not later than the *NASD Board* [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] *NASD Regulation* staff before presenting any rule proposal to the Nasdaq Board.

[3. Waiver of 15-day Period—Notwithstanding the requirements set forth in paragraphs 1 and 2 of this Section, the NASD Board may determine it is advisable to 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.]

3. Petitions for Reconsideration

a. *If the Nasdaq Board or NASD Board takes action on a listing-related rule change, and such action is materially inconsistent with the recommendation of the Nasdaq Listing and Hearing Review Council, the Nasdaq Board or the NASD Board, as applicable, shall provide written notice of its action to the Nasdaq Listing and Hearing Review Council within one calendar day.*

b. *Within two calendar days after receipt of such notice, the Nasdaq Listing and Hearing Review Council, by majority vote, may petition the NASD Board for reconsideration. Such petition shall be in writing and include a statement explaining in detail why the Nasdaq Listing and Hearing Review Council believes that the Nasdaq Board's or NASD Board's action should be set aside.*

c. *The NASD Executive Committee shall act on a timely and complete petition for reconsideration within three calendar days after its receipt. If the NASD Executive Committee grants reconsideration, the matter shall be added to the agenda of the next regularly scheduled meeting of the NASD Board. If the NASD Executive Committee denies reconsideration, the Nasdaq Board's or NASD Board's previous action on the rule shall be final, and staff shall submit the necessary rule filing to the SEC.*

[D] C. Supplemental Delegation Regarding [the Formation of Committees] *Committees*

[The Nasdaq Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the Nasdaq Board in carrying out the functions and authority delegated to Nasdaq by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and

Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the Nasdaq Board.]

[1. Specific Committees]

[a.] 1. Quality of Markets Committee ("QOMC")

[(1)](a) The QOMC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To provide advice and guidance to the Nasdaq Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, and systems operated by The Nasdaq Stock Market from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other participants in The Nasdaq Stock Market.

(ii) To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.

[(2)](b) The QOMC will have broad representation that is equally balanced between [industry] *Industry* and [non-industry] *Non-Industry* committee members. The committee members shall include broad representation of participants in The Nasdaq Stock Market, including investors, market makers, integrated retail firms, and order entry firms.

(c) *At all meetings of the QOMC, a quorum for the transaction of business shall consist of a majority of the QOMC, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.*

[b] 2. Market Operations Review Committee ("MORC")

[(1)](a) The MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in [Section 70] *Rule 11890* of the [Uniform Practice Code ("UPC"),] *Rules of the Association* in accordance with the procedures specified therein. [NASDR] *NASD Regulation* shall receive weekly reports of all determinations made by the staff or MORC under [Section 70 of the UPC] *Rule 11890* for regulatory review.

[(2)](b) The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than [Fifty (50)] 50 percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed [10 %] ten percent of its total revenues.

[c. Firm Operations and Clearance Committee ("FOCC")]

(1) The FOCC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To issue interpretations or rulings with respect to Sections 4–10, 12, 46, 67–68 and 71 of the UPC as well as any other provision of the UPC pertaining to transactions and post execution processing.

(ii) To advise the Nasdaq Board with respect to modifications to the UPC dealing with the transactions and post execution processing.]

[d. Nasdaq Listing and Hearing Review Committee ("Listing Committee")]

(1) The Listing Committee shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To advise the Nasdaq Board on the formulation or modification of initial or maintenance eligibility criteria and fees applicable to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

(ii) To exercise the functions set forth in Article IX of the Code of Procedure, in accordance with the procedures specified therein.

(2) The Listing Committee shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10% of its total revenues.]

[2. Other Committees

With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the By-laws by resolution or resolutions adopted by a majority of the whole Nasdaq Board.]

[E.] IV. Stockwatch

The Stockwatch section handles the trading halt functions for The Nasdaq Stock Market and exchange-listed securities traded in the over-the-counter market (i.e., the Third Market). Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up

will be referred to and conducted by [NASDR] *NASD Regulation*, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that [the NASDR] *NASD Regulation* may deem necessary. [NASDR] *NASD Regulation* staff at all times will have access to all records and files of the Stockwatch function.

* * * * *

Restated Certificate of Incorporation of National Association of Securities Dealers, Inc.

The present name of the corporation is National Association of Securities Dealers, Inc. [(the "Corporation"). The Corporation] ("*NASD*"). The *NASD* was originally incorporated as a nonstock corporation under the name of Investment Bankers Conference, Inc., and its original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 3, 1936. This Restated Certificate of Incorporation of the [Corporation] *NASD*, which both restates and further amends the provisions of the [Corporation's] *NASD's* Certificate of Incorporation as heretofore amended, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

Name

First: The name of the [Corporation] *corporation* is National Association of Securities Dealers, Inc.

Delaware Office and Agent

Second: The registered office of the [Corporation] *NASD* in the State of Delaware is located at 1209 Orange Street, in the City of Wilmington, County of New Castle. The name and address of its registered agent is the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware.

Objects or Purposes

Third: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing, the business or purposes to be conducted or promoted shall include the following:

(1) To promote through cooperative effort the investment banking and securities business, to standardize its principles and practices, to promote therein high standards of commercial

honor, and to encourage and promote among members observance of Federal and [State] State securities laws;

(2) To provide a medium through which its membership may be enabled to confer, consult, and cooperate with governmental and other agencies in the solution of problems affecting investors, the public, and the investment banking and securities business;

(3) To adopt, administer, and enforce rules of fair practice and rules to prevent fraudulent and manipulative acts and practices, and in general to promote just and equitable principles of trade for the protection of investors;

(4) To promote self-discipline among members, and to investigate and adjust grievances between the public and members and between members;

(5) To establish, and to register with the Securities and Exchange Commission as, a national securities association pursuant to Section 15A of the Securities Exchange Act of 1934, as amended, and thereby to provide a medium for effectuating the purposes of said [section;] *Section*; and

(6) To transact business and to purchase, hold, own, lease, mortgage, sell, and convey any and all property, real and personal, necessary, convenient, or useful for the purposes of the [Corporation;] *NASD*.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, not be limited or restricted by reference to, or inference from, the terms of any other clause in this [certificate of incorporation] *Restated Certificate of Incorporation*, but the objects and purposes specified in each of the foregoing clauses of this [article] *Article* shall be regarded as independent objects and purposes.

Form of Organization

Fourth: [This Corporation] *The NASD* shall be a membership corporation and shall have no capital stock. The [Corporation] *NASD* is not organized and shall not be conducted for profit, and no part of its net revenues or earnings shall inure to the benefit of any individual, subscriber, contributor, or member.

Except as may be otherwise provided by [applicable law] *the General Corporation Law of the State of Delaware* or this Restated Certificate of Incorporation, the members of the [Corporation] *NASD* shall have no voting rights. Notwithstanding the foregoing, the members shall be entitled to vote for the election of Governors and on any amendment to the By-Laws of the [Corporation] *NASD* in accordance

with the procedures for such a vote as provided in the By-Laws.

Except as may be otherwise provided by the General Corporation Law of the State of Delaware, other applicable law or this Restated Certificate of Incorporation, the conditions, method of admission, qualifications and classifications of membership, the limitations, rights, powers and duties of members, the dues, assessments, and contributions of members, the method of expulsion from and termination of membership, and all other matters pertaining to the membership and the conduct, management, and control of the business, property, and affairs of the [Corporation] NASD shall be as provided from time to time in the By-Laws of the [Corporation] NASD and the Rules of the Association.

Indemnification; Governor Liability

Fifth: (a) [To] *The NASD shall indemnify, and hold harmless, to the fullest extent permitted by [applicable law] the General Corporation Law of the State of Delaware as it presently exists or may [hereafter be amended, the Corporation shall indemnify any person who was or is made] thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Governor, officer, employee or committee member of the NASD, or is or was a Governor, officer, or employee of the NASD who is or was serving at the request of the NASD as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party [or is otherwise involved in any] to:*

(i) *Any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative [or investigative,], or investigative (other than an action by or in the right of the NASD) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or*

(ii) *Any threatened, pending, or completed action or suit by or in the right of the NASD to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.*

[(b) A Governor of the Corporation shall not be liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Governor, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter be amended.]

(b) *The NASD shall advance expenses (including attorneys' fees and disbursements) to persons described in Article Fifth (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.*

(c) *The NASD may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by the General Corporation Law of the State of Delaware as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he, or a person for whom he is the legal representative, is or was a Governor or officer of the Corporation] or she is or was an agent of the NASD or is or was an agent of the NASD who is or was serving at the request of the [Corporation] NASD as a director, officer, employee, or agent of another corporation [or of a], partnership, [joint venture,] trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, [against all expenses, liability, and loss reasonably incurred or suffered by such person, and the Corporation shall advance expenses (including attorneys' fees) to such person] was or is a party, or is threatened to be made a party to any action or proceeding described in Article Fifth (a).*

(d) *The NASD may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.*

(e) *Notwithstanding the foregoing [, the Corporation shall be required to indemnify a person and advance*

expenses to such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) was authorized by the Board of Governors. The Board of Governors may indemnify and/or advance expenses to any employee or agent of the Corporation to the extent it deems appropriate and to the extent permitted by applicable law. The rights conferred on any person by this Article Fifth(a) shall not be] or any other provision of these By-Laws, no advance shall be made by the NASD to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Governors who have not been named parties to the action, even though less than a quorum, or, if there are no such Governors or if such Governors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the NASD; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the NASD.

(f) *The indemnification provided by this Article Fifth in a specific case shall not be deemed exclusive of any other rights [which such person may have or hereafter acquire under any statute, provision of this Restated Certificate of Incorporation, By-Law, agreement, vote of members or disinterested Governors or otherwise] to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Governor, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.*

(g) *Notwithstanding the foregoing, but subject to Article Fifth (j), the NASD shall be required to indemnify any person identified in Article Fifth (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.*

(h) *The NASD's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation,*

partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the [first sentence] foregoing provisions of this Article Fifth[(b)] shall not adversely affect any right or protection [of a Governor of the Corporation existing hereunder with respect to] hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article Fifth is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by the NASD, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the NASD shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under the General Corporation Law of the State of Delaware.

(k) The NASD shall have power to purchase and maintain insurance on behalf of any person who is or was a Governor, officer, employee, or agent of the NASD, or is or was serving at the request of the NASD as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the NASD would have the power to indemnify such person against such liability hereunder.

(l) A Governor shall not be liable to the NASD or its members for monetary damages for breach of fiduciary duty as a Governor, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as it presently exists or may hereafter be amended.

Perpetual Existence

Sixth: The [Corporation] NASD shall have perpetual existence.

Members' Liability

Seventh: The private property of the members shall not be subject to the payment of corporate debts to any extent whatever.

Governors

Eighth: To the fullest extent permitted by Sections 141(a), 141(j), and 215 of the General Corporation Law of the State of Delaware and other applicable law, the business and affairs of the [Corporation] NASD shall be managed and the election of Governors shall be conducted in the manner provided in this Restated Certificate of Incorporation and the By-Laws of the [Corporation] NASD. To the extent there is any inconsistency between the provisions of this Restated Certificate of Incorporation and the By-Laws relating to such matters and the General Corporation Law, the provisions of this Restated Certificate of Incorporation and the By-Laws shall govern to the fullest extent permitted by the General Corporation Law and other applicable law. To the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, the Board of Governors may delegate such powers, authority, and functions as it shall determine from time to time, in a manner not inconsistent with the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries," approved by the Securities and Exchange Commission, as amended from time to time.

The [Corporation] NASD shall be managed under the direction of a Board of Governors having such powers and duties as shall be provided from time to time in this Restated Certificate of Incorporation or the By-Laws of the [Corporation] NASD. The Board of Governors shall be the governing body of the [Corporation] NASD. The members of the Board of Governors shall be elected by a plurality of the votes of the members of the [Corporation] NASD present in person or represented by proxy at the annual meeting of the members of the [Corporation] NASD and entitled to vote thereat. Elections shall be by written ballot. Any Governor so elected must be nominated by the National Nominating Committee or certified by the Secretary of the NASD (as provided in the By-[laws] Laws) and must satisfy the other qualifications for Governors set forth in the By-Laws or established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries[" as approved by the Securities and Exchange Commission, as amended from time to time.]." The By-Laws may also provide for such assistants to the Board of Governors, and such officers, agents, and employees, as may be deemed necessary

to administer affairs of the [Corporation] NASD.

[The Board of Governors shall be divided into three classes. Each Governor shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination of such Governor, or until his successor is duly elected and qualified, or until his death, resignation, disqualification, or removal. Except for the Chief Executive Officer, no Governor may serve more than two consecutive terms, provided, however, that if a Governor is appointed to fill a term of less than one year, such Governor may serve up to two consecutive terms following the expiration of such Governor's current term. The Chief Executive Officer of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, disqualification, or removal.]

The Board of Governors shall consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market ("Nasdaq"), the Chair of the National Adjudicatory Council of NASD Regulation, and Governors elected by the members of the NASD.

The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq shall serve as Governors until a successor is elected, or until death, resignation, or removal.

The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair may serve an initial term as Governor and up to two consecutive terms as a Governor following the expiration of the initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the NASD members.

The Governors elected by the members of the NASD shall be divided into three classes and shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor

elected by the members of NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term.

In furtherance and not in limitation of the powers granted by [applicable law] the General Corporation Law of the State of Delaware, the Board of Governors is expressly authorized unless the By-Laws otherwise provide, to make, alter, or repeal the By-Laws of the [Corporation] NASD.

In the event of the refusal, failure, neglect, or inability of any member of the Board of Governors to discharge [his] *such member's* duties, or for any cause affecting the best interest of the [Corporation] NASD the sufficiency of which the Board of Governors shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such member and declare [his] *such member's* position vacant and that it shall be filled in accordance with the provisions of the By-Laws.

The [Corporation] NASD may, in its By-Laws, confer powers upon its Board of Governors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by [applicable law] the General Corporation Law of the State of Delaware.

Meetings and Offices

Ninth: Both members and the Board of Governors shall have power, if the By-Laws so provide, to hold their meetings and to have one or more offices within or without the State of Delaware and to keep the books of the [Corporation] NASD (subject to the provision of the statutes), outside the State of Delaware at such places as may be from time to time designated by the Board of Governors.

Right to Amend Certificate of Incorporation

Tenth: The [Corporation] NASD reserves the right to amend, alter, change, or repeal any provisions contained in this [certificate of incorporation] *Restated Certificate of Incorporation*, in the manner now or hereafter prescribed by statute, and all rights conferred upon members herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed under the seal of the [Corporation] NASD this _____ day of _____, [1996] 1997.

* * * * *

Restated Certificate of Incorporation of NASD Regulation, Inc.

The undersigned, Mary Schapiro, President of NASD Regulation, Inc. ("NASD Regulation"), a Delaware corporation, does hereby certify:

First: *That [The] the name of the corporation is NASD Regulation, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was January 25, 1996. The name under which NASD Regulation was originally incorporated was NASD Regulation, Inc.*

Second: *[The address of the Corporation's] That the Certificate of Incorporation of NASD Regulation has been amended and restated in its entirety as follows:*

Article First

The name of the corporation is NASD Regulation, Inc.

Article Second

The address of NASD Regulation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of [the Corporation's] NASD Regulation's registered agent at such address is The Corporation Trust Company.

Article Third

[Third:] The purpose of [the Corporation] NASD Regulation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware[.], and, without limiting the generality of the foregoing business or purposes to be conducted or promoted, shall include the responsibilities and functions set forth in the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries," as approved by the Securities and Exchange Commission, as amended from time to time. NASD Regulation [The Corporation] is not organized for profit and no part of the net earnings of [the Corporation] NASD Regulation shall inure to the benefit of any private stockholder or individual.

Article Fourth

[Fourth:] The total number of shares of stock which [the Corporation] NASD Regulation shall have authority to issue is 2,000, par value \$0.01 per share, all of which shall be shares of common stock.

Article Fifth

[Fifth:] (a) The business and affairs of [the Corporation] NASD Regulation shall be managed by or under the

direction of the Board of Directors. The qualifications, number, tenure, powers, and duties of the members of the Board of Directors shall be provided in the By-Laws. Except as otherwise provided in this Restated Certificate of Incorporation, the By-Laws shall specify the manner by which directors of [the Corporation] NASD Regulation shall be nominated and elected.

(b) Unless and except to the extent that the By-Laws of NASD Regulation [the Corporation] shall so require, the election of directors of [the Corporation] NASD Regulation need not be by written ballot.

[Sixth: To the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, the Corporation shall indemnify any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all expenses, liability, and loss reasonably incurred or suffered by such person, and the Corporation shall advance expenses (including attorneys' fees) to such person. Notwithstanding the foregoing, the Corporation shall be required to indemnify a person and advance expenses to such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) was authorized by the Board of Directors. The rights conferred on any person by this Article Sixth shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, By-Law, agreement, vote of stockholders or disinterested directors or otherwise.]

Article Sixth

[Seventh:] A director of [the Corporation] NASD Regulation shall not be liable to [the Corporation] NASD Regulation or its [stockholders] stockholder for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter be amended. Any repeal

or modification of the first sentence of this Article [Seventh] *Sixth* shall not adversely affect any right or protection of a director of [the Corporation] *NASD Regulation* existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article Seventh

[Eighth:] In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, and repeal the By-Laws of [the Corporation] *NASD Regulation*, subject to the power of the [stockholders of the Corporation] *stockholder of NASD Regulation* to alter or repeal any By-Law made by the Board of Directors.

Article Eighth

[Ninth: The Corporation] *NASD Regulation* reserves the right [at any time, and from time to time,] to amend, alter, change, or repeal any provision contained in this *Restated Certificate of Incorporation*, [and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted,] in the manner now or hereafter prescribed by [law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended] *statute, and all rights conferred herein* are granted subject to [the rights reserved in this Article Ninth] *this reservation*.

Article Ninth

[Tenth: The Corporation] *NASD Regulation* shall have perpetual existence.

[Eleventh: The name and mailing address of the incorporator is Joseph R. Hardiman, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.]

[Twelfth: The powers of the Incorporator shall terminate upon the filing of this Certificate of Incorporation. The names and mailing addresses of the persons who are to serve as the directors of the Corporation until the first annual meeting of the stockholders of the Corporation, or until their successors are elected and qualified are Joseph R. Hardiman, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006, Richard G. Ketchum, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006 and Mary Schapiro, c/o National Association of

Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.]

Third: That such Restated Certificate of Incorporation has been duly adopted by the stockholder of NASD Regulation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

In witness whereof, [I, the undersigned, being the sole incorporator hereinabove named, hereby acknowledge that the foregoing Certificate of Incorporation is my act and deed and further certify that the facts hereinabove stated are truly set forth, and accordingly I have hereunto set my hand this _____ day of January, 1996] *the undersigned have executed this certificate this day of, 1997.*

* * * * *

Restated Certificate of Incorporation of the NASDAQ Stock Market, Inc.

[Adopted in accordance with the provisions of Section 242 and Section 245 of the General Corporation Law of the State of Delaware]

[The undersigned, Joseph R. Hardiman] *The undersigned, Alfred Berkeley*, President of The Nasdaq Stock Market, Inc. ("*Nasdaq*"), a Delaware corporation [(the "*Corporation*")], does hereby certify:

First: That the name of the [Corporation] *corporation* is The Nasdaq Stock Market, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which [the Corporation] *Nasdaq* was originally incorporated was "*NASD Market Services, Inc.*"

Second: That the Certificate of Incorporation of [the Corporation] *Nasdaq* has been amended and restated in its entirety as follows:

Article First

The name of the [Corporation] *corporation* is The Nasdaq Stock Market, Inc.

Article Second

The address of [the Corporation's] *Nasdaq's* registered office in the State of Delaware is 1209 Orange Street, *City of Wilmington, [Delaware 19801,] County of New Castle, Delaware 19801*. The name of [its] *Nasdaq's* registered agent at such address is The Corporation Trust Company.

Article Third

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity

for which corporations may be organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing business or purposes to be conducted or promoted, *shall include the responsibilities and functions set forth in the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries," as approved by the Securities and Exchange Commission, as amended from time to time.* [shall include the following:

(a) To investigate, study, organize, develop, maintain and operate, and to assist and contract with others for the investigation, study, organization, development, maintenance and operation of systems for collecting, processing, and preparing for distribution and publication, and otherwise assisting, participating in, and coordinating the distribution and publication of information with respect to transactions in and quotations for securities by means of an electronic data processing system or systems, as such may be required or permitted by federal statute and regulation (in particular the Securities Exchange Act of 1934 ("Exchange Act") and the regulations thereunder, as either may be amended from time to time) on a current and continuing basis, consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets in securities, and the removal if impediments to and perfection of the mechanism of a national market system;

(b) To organize, develop, operate and maintain securities markets and related systems that assure: (i) Economically efficient execution, clearance and settlement of securities transactions; (ii) fair competition among brokers and dealers, and among exchange markets and markets other than exchange markets; (iii) the practicability of broker/dealers executing inventors' orders in the best market; (iv) the linking of all markets for qualified securities through communications and data processing facilities; and (v) appropriate regulatory oversight;

(c) To develop, organize, operate and maintain securities markets and related systems that will assist the National Association of Securities Dealers, Inc. in carrying out its regulatory responsibilities under the Exchange Act, particularly Sections 11A and 15A and all applicable rules promulgated under the Exchange Act;

(d) To establish terms, conditions, rules, regulations, orders, and schedules for the operation, maintenance, and regulation of methods, means and

systems established by the Corporation; and

(e) To offer consulting services respecting the organization, development, operation, and maintenance of securities market systems and facilities, including systems and procedures for regulatory oversight of trading in securities markets.]

Article Fourth

[The Corporation] *Nasdaq* shall be authorized to issue a total of 2,000 shares of common stock with no par value.

Article Fifth

[The Corporation] *Nasdaq* shall be governed by the Board of Directors of such number and having such qualifications, powers, and duties[,] as shall be provided in the By-Laws. The Board shall be selected in such manner, and shall serve for such term, as shall be stated in the By-Laws. The Board of Directors shall have the power to adopt,

alter, or repeal the By-Laws of [the Corporation] *Nasdaq* at any meeting at which a quorum is present by the affirmative vote of the majority of the whole Board of Directors.

A [Director of this Corporation] *director of Nasdaq* shall not be liable to [the Corporation] *Nasdaq* or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of [the Corporation] *Nasdaq* existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article Sixth

Nasdaq reserves the right to amend, alter, change, or repeal any provisions

contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation.

Article Seventh

[The Corporation] *Nasdaq* shall have perpetual existence.

Third: That such Restated Certificate of Incorporation has been duly adopted by the [stockholders of the Corporation] *stockholder of Nasdaq* in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

In witness whereof, the undersigned have executed this certificate this [20th] ____ day of [December] ____, [1993] 1997.

[FR Doc. 97-26522 Filed 10-9-97; 8:45 am]

BILLING CODE 8010-01-P