

instituted will remain eligible for execution. Consequently, the Commission believes that investors who have submitted orders will be unduly disadvantaged or effected by any subsequent ban on such orders. The Commission further believes that allowing individual investors to enter stop orders or stop limit orders for 2,099 shares or less, while restricting the professional use of such orders when the NYSE institutes a ban pursuant to Rule 80A represents a reasonable response to the problem presented by smaller, individual investors who may be able to monitor market conditions on a continuous basis and who desire a measure of downside protection in a rapidly moving market. In contrast, market professionals are able to monitor the market on a continuous basis and have less of a need to enter such orders. The Commission believes that this exception to the proposed rule should protect investors and the public interest by ensuring that individual investors' stop orders and stop limit orders will be handled even during periods of market volatility.<sup>12</sup>

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 merely accelerates the effectiveness of the proposed rule. The Commission further notes that no comments were received on this proposal. Finally, the Commission notes that it has previously approved an identical proposal submitted by the BSE.<sup>13</sup> Therefore, the Commission believes that this filing raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act<sup>14</sup> to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-97-24 and should be submitted by December 12, 1997.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-CHX-97-24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-30626 Filed 11-20-97; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39326; File Nos. SR-NASD-97-71, SR-NASD-96-20, and SR-NASD-96-29]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change, Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change, and Order Extending Temporary Approval of SR-NASD-96-20 and SR-NASD-96-29, Regarding 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**

November 14, 1997.

On September 19, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission")

a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> In this filing, the NASD proposed amendments to the corporate documents of the NASD, its regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), and its stock market operating subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"),<sup>3</sup> as well as to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan"), in order to finalize the corporate restructuring of the Association.<sup>4</sup> Notice of this proposed rule filing was published in the **Federal Register** on October 10, 1997 ("Notice").<sup>5</sup> The Commission did not receive any comment letters on the filing.

Portions of the NASD Proposal were previously submitted and noticed in the **Federal Register** in SR-NASD-96-02, SR-NASD-96-16, SR-NASD-96-20, SR-NASD-96-29, and SR-NASD-97-28.<sup>6</sup> The versions of the by-laws and

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

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

<sup>3</sup> In this Order, NASD Regulation and Nasdaq are referred to as the "Subsidiaries." The three entities, NASD, NASD Regulation, and Nasdaq are referred to collectively as the "Association."

<sup>4</sup> The corporate documents proposed for amendment are: (1) The By-Laws of the NASD; (2) the By-Laws of NASD Regulation; (3) the By-Laws of Nasdaq; (4) the Restated Certificate of Incorporation of the NASD; (5) the Restated Certificate of Incorporation of NASD Regulation; and (6) the Restated Certificate of Incorporation of Nasdaq. The by-laws and restated certificates of incorporation of the NASD and its Subsidiaries are collectively referred to in this Order as the "corporate governance documents."

<sup>5</sup> Securities Exchange Act Release No. 39175 (September 30, 1997), 62 FR 53062 (October 10, 1997). On September 29, 1997, the NASD filed a technical amendment to the proposed rule change, the substance of which was included in the Notice. See letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 1997. On September 30, 1997, the filing was further amended by the NASD to correct non-substantive typographical errors, all of which were incorporated in the original filing as well. Conversation between Mary Dunbar, Office of General Counsel, NASD Regulation, and Mandy S. Cohen, Division of Market Regulation, Commission. Subsequent to notice of the rule filing, the NASD filed Amendment No. 2, which adjusted the period during which a member may add an agenda item to the annual meeting, to allow the NASD sufficient time to prepare for the new agenda item. See letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 7, 1997. Collectively, the original filing and its subsequent amendments are referred to herein as the "NASD" Proposal."

<sup>6</sup> Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (File No. SR-NASD-96-02); Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (File No. SR-NASD-96-16); Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996), (File No. SR-

<sup>12</sup> The Commission notes that this exception to the proposed rule is consistent with the rules adopted by the NYSE and BSE. See NYSE Rule 80A(b) and Ch. II, Sec. 35(b) of the BSE's rules.

<sup>13</sup> See Securities Exchange Act Release No. 32697 (July 29, 1993) 58 FR 41538 (August 4, 1993) (order approving File No. SR-BSE-92-05).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

Delegation Plan contained in SR-NASD-96-02 and 96-16 were superseded by the later filings. The Commission's temporary approval of the versions of the by-laws and Delegation Plan proposed in SR-NASD-96-20 and 96-29 (as amended), which is scheduled to lapse on November 15, 1997, will be temporarily extended again, until the effective dates of the provisions approved in this Order.<sup>7</sup> The revisions to the corporate governance documents and the Delegation Plan proposed in SR-NASD-97-28 were withdrawn by Amendment No. 3 thereto.<sup>8</sup>

## I. Introduction and Background

In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance ("Select Committee") to review the NASD's corporate governance structure and to recommend changes to enable the NASD to better meet its regulatory and business obligations, including its oversight of the Nasdaq market. The Select Committee published its findings and recommendations in the Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors ("Select Committee Report"), which was presented to the NASD Board of Governors at its September 1995 board meeting.

Following the recommendations of the Select Committee, the NASD proposed reorganizing its corporate structure. Nasdaq was given sole responsibility to operate and oversee the Nasdaq market and other over-the-counter ("OTC") markets, while NASD Regulation was given responsibility for regulation and member and constituent services. The NASD retained ultimate policymaking, oversight, and corporate authority as the parent holding company and statutory self-regulatory organization ("SRO"), while granting substantial deference to the operating Subsidiaries in the areas of their

respective jurisdictions. These revisions to the corporate structure, outlined in the Delegation Plan<sup>9</sup> and implemented through amendment of the governing corporate documents, were proposed and adopted in mid-1996.<sup>10</sup>

On August 8, 1996, the Commission issued an order pursuant to Section 19(h)(1) of the Act ("SEC Order"), including fourteen undertakings ("Undertakings"),<sup>11</sup> and a related report pursuant to Section 21(a) of the Act ("21(a) Report").<sup>12</sup> The SEC Order made certain findings about the NASD and imposed remedial sanctions, including ordering the NASD to comply with the Undertakings. The Commission determined that the NASD had not complied with its own rules and had failed to satisfy its obligations under the Act to enforce such rules and the federal securities laws.

The 21(a) Report findings indicated, among other things, that market making firms were afforded a disproportionate representation on the boards and

committees that formerly governed the NASD, administered its disciplinary process, and operated the Nasdaq market. The Commission found that the "undue influence of market makers and a lack of vigor and balance in the NASD's enforcement activities with respect to market maker firms" was inconsistent with the NASD's statutory obligation to oversee the Nasdaq market, and to enforce its rules and regulations fairly as to all member firms.<sup>13</sup>

Based on the Commission's specific findings, the NASD agreed to the Undertakings, including, among other things, undertakings to improve public representation on its Boards and committees, to confer sole discretion in the regulatory staff of the NASD as to prosecutorial and regulatory matters, and to promulgate and apply uniform standards for regulatory and other access issues.<sup>14</sup> In response to the

<sup>13</sup> See 21(a) Report, *supra* note 11, at 39.

<sup>14</sup> Undertakings one through six of the SEC Order require the NASD:

(1) To implement and maintain at least fifty percent independent public and non-industry membership in its Board of Governors, the Board(s) of Governors or Directors of all of its subsidiaries and affiliates that exercise or have delegated self-regulatory functions, and the following committees: The National Nominating Committee, the Trading/Quality of Markets Committee, the Arbitration Committee, the Market Surveillance Committee (now the Market Regulation Committee), the National Business Conduct Committee, the Management Compensation Committee, and all successors thereto.

(2) To provide that NASD and any successor thereto has, consistent with the NASD's By-Laws and Plan of Delegation, as amended from time to time and as approved by the Commission, primary day-to-day responsibility for the regulation, surveillance, examination, and disciplining of NASD member firms and registered persons, with respect to market activities as well as other self-regulatory matters, with full access to the records of the Nasdaq market.

(3) To institute the participation of professional Hearing Officers (who shall be attorneys with appropriate experience and training) to preside over disciplinary proceedings.

(4) To provide for the autonomy and independence of the regulatory staff of the NASD and its subsidiaries such that the staff, subject only to the supervision of the Board of Governors of the NASD and the Boards of Directors of NASD and Nasdaq, and any successor thereto, (a) has sole discretion as to what matters to investigate and prosecute, (b) has sole discretion to handle regulatory matters such as approval of applications for membership and the conditions and limitations that may be placed thereon, (c) prepares rule proposals, rule interpretations and other policy matters with any consultations with interested NASD constituencies made in fair and evenhanded manner, and (d) is generally insulated from the commercial interests of its members and the Nasdaq market. Among other things, the District Business Conduct Committees and the Market Surveillance Committee shall not have any involvement in deciding whether or not to institute disciplinary proceedings, nor shall the District Committees, or any subcommittee thereof, have any involvement in the review or approval of applications for membership in the NASD. Subject to the foregoing, the regulatory staff of the NASD engaged in the

NASD-96-20), as amended; Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) (File No. SR-NASD-96-29), as amended; and Securities Exchange Act Release No. 38545 (April 24, 1997) 62 FR 25226 (May 8, 1997) (File No. SR-NASD-97-28), as amended, respectively.

<sup>7</sup> See Securities Exchange Act Release No. 38909 (August 7, 1997), 62 FR 43571 (August 14, 1997) (SR-NASD-97-29) and Securities Exchange Act Release No. 38644 (May 15, 1997), 62 FR 43571 (May 22, 1997) (SR-NASD-96-20). The effective dates of the provisions approved by this Order are set forth *infra* notes 51 and 52 and the accompanying text.

<sup>8</sup> 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).

<sup>9</sup> The initial version of the Delegation Plan (with the implementing provisions contained in Rule 0130) was filed with the Commission in SR-NASD-96-16. For the purposes of this Order, reference to a "Rule" refers to the NASD Rules of the Association. It was published for comment and approved by the Commission on a temporary basis for a period of 90 days. See Release No. 34-37107, *supra* note 6. The Commission thereafter published notice of proposed rule changes containing revisions to the initial Delegation Plan and granted temporary accelerated approval thereto in Release No. 34-37425, *supra* note 6 (additional 120 day approval, as revised), Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1997) (additional six month temporary approval through November 15, 1997, as revised), Securities Exchange Act Release No. 38645 (May 15, 1997), 62 FR 28086 (May 22, 1997) (additional six month temporary approval, as revised), and Release No. 34-38909, *supra* note 7 (continuing temporary approval through November 15, 1997).

<sup>10</sup> The Commission first granted temporary approval of the by-law revisions implementing the restructuring on April 11, 1996. See Release No. 34-37106, *supra* note 6. The Commission thereafter published notice of proposed rule changes containing revisions to the by-laws and/or granted temporary accelerated approval of such revisions in Securities Exchange Act Release No. 37424 (July 11, 1996), 61 FR 37515 (July 18, 1996) (notice); Release No. 34-37282, *supra*, note 6 (temporary approval for 120 days, as revised); Securities Exchange Act Release No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996) (temporary approval for 6 months, as revised); Release No. 34-38644, *supra* note 7 (temporary approval for 6 months, as revised).

<sup>11</sup> Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC 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 first six Undertakings included in the SEC Order are reproduced *infra*, in note 14.

<sup>12</sup> Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (Aug. 8, 1996).

Commission's findings in the 21(a) Report and to comply with the terms of certain undertakings, the NASD subsequently proposed the amendments to the Delegation Plan and the Association's corporate governance documents; these amendments were temporarily approved by the Commission. As discussed below, the NASD is now proposing further changes to the Association's corporate governance documents.

## II. Description of the Proposal<sup>15</sup>

The revisions to the Association's corporate governance documents and the Delegation Plan respond to the changes required by the SEC Order, and the 21(a) Report. They also implement the most recent corporate restructuring, by reducing the number of members of the NASD, NASD Regulation and Nasdaq governing boards. In addition, they clarify various provisions in the corporate governance documents to more clearly delineate Association practices and procedures. The purpose of the amendments is to streamline the Association's decision making process to be more responsive, while simultaneously promoting public and member access to, and scrutiny of, the day-to-day activities of the Association.

### A. The Corporate Governance Documents

The NASD proposes to retain the current three corporation structure, but reduce the overall number of board members for the three corporations and revise the structure of the three governing boards. Currently, the NASD Board has eleven Governors, the NASD Regulation Board has twenty-four Directors, and the Nasdaq Board has

fourteen Directors.<sup>16</sup> As amended, the NASD Board will consist of twenty-one to twenty-seven Governors, and include a nucleus of Governors who will not serve as directors on either Subsidiary board.<sup>17</sup> The Subsidiary boards will have five to eight Directors each, all of whom will serve simultaneously as an NASD Governor.<sup>18</sup> The number of directors on each Subsidiary board will be equal, thereby enabling the nucleus of individuals serving only as NASD Governors to perform a tie-breaking function on the parent board. Each board will be balanced between Public, Non-Industry and Industry participants.<sup>19</sup> Specific terms of office for board and committee members have also been imposed.<sup>20</sup>

<sup>16</sup> The NASD Proposal will allow the Association to reduce the overall number of Association board members from forty-nine to twenty-seven, reduce the number of board meetings from seventeen 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.

<sup>17</sup> As reconstituted, the NASD Board will include the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the NAC, and between 16 and 22 elected Governors. The elected Governors will include an investment company, an insurance company, and a Nasdaq issuer.

<sup>18</sup> The NASD Regulation and Nasdaq Boards of Directors will have five to eight Directors, and will be equal in size at all times. Only Governors of the NASD Board are eligible for election to these boards. The boards will include their respective Presidents. The Chief Executive Officer of the NASD will be an ex-officio non-voting member of each, but will not be recognized for compositional purposes. The NASD Regulation Board will also include the chair of NAC, as well as an investment company and an issuance company representative. The Nasdaq Board will include at least one issuer representative. See new NASD Regulation By-Laws, Article IV, Sections 4.2, 4.3; see also new Nasdaq By-Laws, Article IV, Sections 4.2, 4.3.

<sup>19</sup> A majority of the Governors on the NASD Board will be Non-Industry, including five or six Public Governors, depending on the size of the board. Non-Industry Directors on the NASD Regulation and Nasdaq Boards must equal or exceed the number of Industry Directors plus their respective President, and will also include at least one Public Director each (or two each for eight-member boards). For a discussion of the terms "Public," "Non-Industry," and "Industry," see *infra* notes 26, 27, and 29.

<sup>20</sup> The term of office for the Board of Governors of the NASD varies between elected and appointed positions. The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq serve until a successor is elected, or until death, resignation, or removal. The Chair of the NAC serves as a Governor for a one year term, or until a successor is elected and qualified, or until death, resignation, disqualification, or removal. The Governors elected by the members of the NASD serve three year terms. See new NASD By-Laws, Article VII, Sections 5(a-c). Members of the Boards of Directors for both NASD Regulation and Nasdaq are elected annually. See new NASD Regulation By-Laws, Article IV, Section 4.4; new Nasdaq By-Laws, Article IV, Section 4.4; new Nasdaq By-Laws, Article IV, Section 4.4. Members of the NASD's Management Compensation Committee serve a term of one year. See new Delegation Plan, Article I(C).

The NASD Board, while remaining ultimately responsible for the actions of its Subsidiaries, will retain its current authority to review and ratify or reject certain actions of the Subsidiaries. The process of exercising this authority, however, will be expedited by transferring certain functions to new entities under each Subsidiary board. The most significant of these transfers involves adjudication and listing decisions. Given the increased responsibilities of individual Governors created by the new interlocking boards structure, the Association wishes to ensure that a sufficient number of qualified individuals are available to review adjudication and listing decisions. The functions of the National Business Conduct Committee, a committee of the NASD Regulation Board composed entirely of board members, therefore will be transferred to a new entity, the National Adjudicatory Council ("NAC"),<sup>21</sup> and the functions of the Nasdaq Listing and Hearing Review Committee will transfer to the new Nasdaq Listing and Hearing Review Council ("Listing Council").<sup>22</sup> The NAC will be appointed by the NASD Regulation Board, after nomination by the National Nominating Committee. Similarly, the Listing Council members will be appointed by the Nasdaq Board. Except for the Chair of the NAC, members of the councils will not serve on any of the Association's boards. These new councils will meet at least 15 days before the Subsidiary boards and generally will provide written reports of their decisions to their respective boards not later than 15 days before the Subsidiary board meetings, which will be scheduled to occur one day before the meetings of the NASD Board.

In addition to changes in the structure and composition of the Association's boards and committees, the NASD proposes to include strict quorum requirements. These requirements provide that decisions made by less than the entire board or balanced committee are also reached through balanced consideration.<sup>23</sup> For example,

<sup>21</sup> See new NASD Regulation By-Laws Article V.

<sup>22</sup> See new Nasdaq By-Laws Article V.

<sup>23</sup> See new NASD By-Laws Article IX, Section 4(d); new NASD By-Laws Article IX, Section 5(e); see also new NASD By-Laws Article VII, Section 8 (establishing quorum for transaction of business at Board meetings as a "majority of the Board, including not less than 50 percent of the Non-Industry Governors"); new NASD Regulation By-Laws Article V, Section 5.9 (establishing quorum requirements for the NAC as "a majority of the members, including not less than 50 percent of the Non-Industry members"); new Nasdaq By-Laws Article IV, Section 4.9 (establishing quorum for the

disciplinary process may, solely on their own initiative, inform themselves on matters of market or other securities industry expertise by consulting with representatives of member firms or committees of the NASD or its subsidiaries.

(5) To promulgate and apply on a consistent basis uniform standards for regulatory and other access issues, such as admission to the NASD as a member firm, and conditions to becoming a market maker; and institute safeguards to ensure fair and evenhanded access to all services and facilities of the NASD.

(6) To ensure the existence of a substantial, independent internal audit staff which reviews all aspects of the NASD (including the regulatory function, the disciplinary process and the Nasdaq stock market and its systems) and reports directly to an audit committee of the NASD Board of Governors which includes a majority of public and non-industry Governors and is chaired by a public Governor.

<sup>15</sup> Only substantive changes to the corporate governance documents and the Delegation Plan are highlighted. Unless specifically noted otherwise, the term "committee" include the NAC and the Listing Council. For a more detailed description of the NASD's proposed rule change, see Notice, *supra* page 2.

Continued

representation of Non-Industry and Public committee members on the new NASD Executive Committee must be at least as great as the representation of Non-Industry and Public Governors on the NASD Board, and the quorum for the transaction of business at Executive Committee meetings must consist of a majority of its members, including at least 50 percent of the Non-Industry committee members. Similarly, a quorum for the transaction of business at Audit Committee meetings will require a majority of the Audit Committee, including at least 50 percent of the Non-Industry committee members.<sup>24</sup>

Finally, the definitions of Industry, Non-Industry and Public have been revised.<sup>25</sup> A Public participant on a board or committee is someone who has no material business relationship with the Association, or with any broker or dealer.<sup>26</sup> The Non-Industry category is slightly broader, permitting participation by those connected with companies listed on Nasdaq.<sup>27</sup> The Industry category is,<sup>28</sup> and includes all brokers and dealers, their officers,

Board of Directors to transact business as "a majority of the Board, including not less than 50 percent of the Non-Industry Directors".

<sup>24</sup> Similar quorum requirements will be imposed on the Executive Committees of the Subsidiaries, the NASD Finance Committee, the National Nominating Committee, the Management Compensation Committee, and the NAC.

<sup>25</sup> In addition, disqualification and removal procedures have been imposed, supporting adherence to a balanced compositional structure. Disqualification in this instance refers to a change in status from Public and/or Non-Industry to Industry. See new NASD Article VII, Section 6. Both Governors and members of the NAC and the National Nominating Committee may be removed by the Board if they refuse, fail, neglect, or are not able to discharge their duties. See NASD By-Laws, Article VII, Section 1(b) (NASD); NASD By-Laws, Article VII, Section 9(d) (NAC); See NASD Regulation By-Laws, Article V, Section 5.6 (National Nominating Committee).

<sup>26</sup> The new NASD By-Laws define a "Public" participant as one "who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq." See NASD By-Laws Article I, Section (ff) and (gg); new NASD Regulation By-Laws Article I, Section (z); new Nasdaq By-Laws Article I, Section (s).

<sup>27</sup> The new NASD By-Laws define a "Non-Industry" participant as one "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." See new NASD By-Laws Article I, Section (cc) and (dd); NASD Regulation By-Laws Article I, Section (x); new Nasdaq By-Laws Article I, Section (q).

<sup>28</sup> Although not specifically defined as "Industry" participants, officers of the NASD, NASD Regulation or Nasdaq serving as members (other than ex-officio members) of a board or committee appointed under the newly revised by-laws of any of the three corporations, will be counted with the Industry participants for compositional and quorum requirements.

directors, and holding companies, large shareholders of brokers and dealers, as well as many of the people (including professionals) that work for them.<sup>29</sup>

In addition to revising the structure of the boards and defining the categories of participants, the NASD proposes to change the nomination process for Governors, Directors and members of the NAC and the Listing Council.<sup>30</sup> Compositional requirements will be introduced for the National Nominating Committee, the number of Governors and Directors serving will be limited, and specific removal provisions for National Nominating Committee members will be added.<sup>31</sup> In addition, the provisions through which dissident candidates can stand for election will be refined.<sup>32</sup> Members will be given

<sup>29</sup> The new NASD By-Laws define an "Industry" participant as one "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 revenue 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." See new NASD By-Laws Article I, Section (n) and (o); new NASD Regulation By-Laws, Article I, Section (q); new Nasdaq By-Laws Article I, Section (j).

<sup>30</sup> See new NASD By-Laws Article VII, Sections 9 and 10.

<sup>31</sup> See, e.g., new NASD By-Laws Article VII, Section 4(a) (Board size and composition); new NASD By-Laws Article VII, Section 1(b) (removal of Governors for cause); new NASD Regulation By-Laws Article V, Section 5.2(a) (NAC size and composition); new NASD Regulation By-Laws Article V, Section 5.6 (NAC member removal provisions); new Nasdaq By-Laws Article VI, Section 5.2(a) (Listing Council size and composition); new Nasdaq By-Laws Article V, Section 5.6 (Listing Council member removal provisions).

<sup>32</sup> See new Article VII, Section 10. Related to these changes, enhanced procedures for participation in annual meetings have been added.

additional time in which to propose dissident candidates, and, in their official capacities, Governors will not be allowed to express a preference for any candidate during elections involving dissident candidates.<sup>33</sup>

The NASD also proposes to amend the conflicts of interest provisions.<sup>34</sup> As revised, Governors and committee members will be prohibited from directly or indirectly participating in any adjudication of the interests of a party if they have a conflict of interest or bias, or if circumstances otherwise exist where their fairness might reasonably be questioned. Governors or committee members must recuse themselves or be disqualified in accordance with the Rules of the Association.<sup>35</sup> In addition, similar provisions address contracts and transactions between the NASD and any entity in which a Governor or officer is involved.<sup>36</sup>

## 1. Changes to the NASD By-Laws

In addition to the structural and related changes, the NASD is proposing several clarifying amendments to its by-laws. For example, the term "person associated with a member" is revised to clarify that this term includes any natural person registered under the Rules of the Association, without regard to employment responsibilities.<sup>37</sup> This

See new NASD By-Laws Article XXI, "Meetings of Members."

<sup>33</sup> See new NASD By-Laws Article VII, Section 11; new NASD Regulation By-Laws Article IV, Section 4.14; new Nasdaq By-Laws Article IV, Section 4.15.

<sup>34</sup> See, e.g., new NASD By-Laws, Article 4, Section 4.14(a).

<sup>35</sup> See, e.g., Rule 9160.

<sup>36</sup> New Article XV, Section 4(b) of the NASD By-Laws 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. New Section 4(b) further 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. Contracts and Transactions between the NASD and its Subsidiaries are not subject to proposed Section 4(b). See also new NASD Regulation By-Laws, Article IV, Section 4.14(b); new Nasdaq By-Laws, Article IV, Section 4.14(b).

<sup>37</sup> See new NASD By-Laws Article I(ee); new NASD Regulation By-Laws I(y); and new Nasdaq By-Laws Article I(r).

counters the suggestion in certain case law that any person whose job title or position is not specifically identified in the Association's definition of associated person (regardless of whether the individual is registered with an NASD member firm) may not be considered an associated person if he or she is not directly "engaged" in the securities business.<sup>38</sup>

Similarly, the revisions clarify the proceedings for obtaining relief from the Association's eligibility requirements. The current language could be read to suggest that a broker or dealer seeking admission to the Association could use such proceedings to obtain relief from the eligibility requirements as a means of gaining admission to the Association. The Association did not intend to apply this provision to applicants for membership, and the amendment removes this potential ambiguity.<sup>39</sup>

## 2. Changes to the NASD Regulation By-Laws

The current NASD Regulation By-Laws were adopted on July 19, 1996, in connection with the initial restructuring of the NASD following presentation of the Select Committee Report to the NASD Board. In addition to amending the NASD Regulation By-Laws to conform them to the changes described above, the by-laws now include recognition of the NASD as sole stockholder of NASD Regulation capital stock. Furthermore, the language describing the composition and powers of the new NAC, including procedures

for district elections, are included in the NASD Regulation By-Laws. Finally, indemnification provisions protecting NASD Regulation personnel (including Directors), identical to those of the NASD and proposed for Nasdaq, have been added.<sup>40</sup>

## 3. Changes to the Nasdaq By-Laws

Nasdaq adopted its current By-Laws on October 27, 1993. The proposed amendments conform the by-laws to the changes described above. The provisions creating and defining the Listing Council are contained herein. In addition, indemnification provisions mirroring the NASD and NASD Regulation have been included.<sup>41</sup>

## 4. Changes to the Restated Certificates of Incorporation

The changes to the NASD Restated Certificate of Incorporation conform it to the NASD Board structural changes previously described.<sup>42</sup> Similar conforming changes will be made to the NASD Regulation and Nasdaq Certificates of Incorporation.<sup>43</sup>

## B. The Delegation Plan

The amendments to the Delegation Plan reflect the new interlocking board structure of the NASD and its Subsidiaries, discussed above. For example, the Delegation Plan is amended to authorize the NASD Board to take action on its own initiative, either by the full board or through the NASD Executive Committee. The purpose of this amendment is to allow the Association to act quickly and decisively when necessary. Separate consideration by the Subsidiary board can 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 requires that matters within a Subsidiary's sphere of delegated authority be considered by that Subsidiary's board before consideration by the NASD Board.

In addition, time-sensitive matters arising between regularly scheduled board meetings can be resolved by the

NASD Executive Committee. Currently, the Subsidiaries' executive committees may take initial action on such matters, but the action cannot be implemented without the unanimous written consent of the NASD Board. Obtaining such consent can impede the Association's ability to respond to urgent matters. As revised, the NASD Executive Committee will be able to convene telephonically on an as-needed basis to address time-sensitive matters.

The revisions to the Delegation Plan also include provisions addressing petitions for reconsideration of NAC and Listing Council recommendations on proposed rule changes, when their recommendations are inconsistent with later action taken by their respective governing Subsidiary boards. If either the NAC or Listing Council disagrees with its respective Subsidiary board, they may now petition the NASD Board for reconsideration of the matter.<sup>44</sup>

In addition to the changes related to reconstitution of the governing boards, the revised Delegation Plan includes changes to several important committees. Specifically, the compositional and quorum requirements of the NASD's Management Compensation Committee, NASD Regulation's Market Regulation, National Arbitration and Mediation, and Operations Committees, as well as Nasdaq's Quality of Markets and Market Operations Review Committees, are included in the revised Delegation Plan, providing for diversity of member, non-industry and public participation.

Furthermore, the revised Delegation Plan includes an amendment requiring establishment of procedures to consider requests by members, associated persons, and members of the public to initiate formal disciplinary action.<sup>45</sup> This will allow the Association to be more responsive to public inquiry and/or complaints about brokers, dealers and their employees.

Finally, the oversight and management responsibilities of Stockwatch, which handles the trading halt functions for the Nasdaq market and exchange-listed securities traded in the over-the-counter market, are more clearly defined. As amended, the Delegation Plan provides that review of all questionable market activity, possible rule infractions, or any other matters that require any type of

<sup>38</sup> See *Slade versus Metropolitan Life Ins. Co.* 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).

<sup>39</sup> See Article III, Section 3(d). The changes include deletion of Section 3(d)(2), the status of members or persons engaged in eligibility proceedings, which is not set forth in the 9520 series of the Rules of the Association. This is not a substantive change in the Association's practice. The by-law revisions also remove the requirement that members, registered representative and other associated persons release the Association from liability except for willful malfeasance. See Former Article III, "Membership," renumbered as new Article IV, and former Article IV, "Registered Representatives and Associated Persons," renumbered as new Article V. The Association proposes to delete Sections 1(a)(3) of Membership and 2(a)(2) of Registered Representatives and Associated Persons, which previously included the willful malfeasance release. This is not substantive revision, however. The governing state law in Delaware contains a similar release from liability under the "business judgment" rule, see, *Smith v. Van Gorkom*, 488 A.2d 858, 873 (De. 1985) (recognizing the gross negligence standard of care in the context of analyzing a corporate director's duty of care), although "there is no protection for directors who have made 'an unintelligent or unadvised judgment.'" *Id.*, at 872 (citing *Mitchell v. Highland-Western Glass*, 167 A.2d 831, 833 (De. 1933)).

<sup>40</sup> See new NASD Revised Certificate of Incorporation Article Fifth (Indemnification; Governor Liability); new Nasdaq By-Laws Article VIII (Indemnification of Directors, Officers, Employees, Agents, Nasdaq Listing and Hearing Review Council and Committee Members).

<sup>41</sup> See *e.g.*, new NASD Revised Certificate of Incorporation Article Fifth (Indemnification; Governor Liability); new NASD Regulation By-Laws Article X (Indemnification of Directors, Officers, Employees, Agents, NAC and Committee Members).

<sup>42</sup> See new Article Eighth.

<sup>43</sup> Full text versions of these changes are contained in the Notice, see *supra* text accompanying note 5.

<sup>44</sup> See new sections II.B.2. and III.B.3.

<sup>45</sup> See new section II.A.1.f. Additional discussion of these procedures is included in the order approving SR-NASD-97-28, discussed *supra* note 6, in connection with deletion of former Rule 8120 of the Rules of the Association. See Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997).

investigative or regulatory follow-up will be referred to and conducted by NASD Regulation, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement action that NASD Regulation deems necessary. In addition, the revisions provide that NASD Regulation staff at all times will have access to all records and files of the Stockwatch function.

### III. Comments

The Commission did not receive comments on the NASD Proposal.

### IV. Discussion

#### A. The Proposed Amendments

As discussed below, the Commission has determined at this time to approve the NASD Proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.<sup>46</sup> In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the NASD Proposal.<sup>47</sup>

The Commission has evaluated the NASD's proposed rule change in light of the standards and objectives set forth in the Act (particularly Sections 15A<sup>48</sup> and 3(f)<sup>49</sup>), as well as the SEC Order and the 21(a) Report. The Commission believes

that the changes to the Association's corporate structure are consistent with those provisions, as well as the objectives of the Undertakings and the 21(a) Report. The proposed rule change maintains a balanced governance structure by providing that the number of Public and Non-Industry members of the NASD Board exceed the number of Industry members. By providing for substantial and meaningful public and non-industry involvement, in addition to diverse representation of various sectors of the securities industry, on the governing boards, the NASD Proposal should encourage dispassionate performance of the NASD's responsibilities as an SRO.

As reconstituted under the proposed rule change, each corporation will continue to retain a clear and distinct role, with separate officers and staff. Specifically, the NASD will continue to resolve conflicts between the Subsidiaries and retain ultimate responsibility for its statutory obligations as an SRO; NASD Regulation will continue to perform the day-to-day regulation of brokers and dealers, have primary responsibility for adjudication and enforcement, and to supervise surveillance of Nasdaq and other OTC markets; and Nasdaq will continue to own and operate the Nasdaq market and develop and implement rules governing that market.<sup>50</sup>

The substitution of the NAC and the Listing Council for their predecessor board committees, should provide that the adjudication and listing review process is conducted by qualified individuals representing both the public and the industry. Creation of the new councils is consistent with the requirements of the Act, and with the NASD's obligations under the SEC Order and the 21(a) Report.

Finally, the various changes to the quorum provisions, the nominating procedures, and the conflicts of interest provisions contribute to and enhance the Association's ability to perform its SRO responsibilities in an objective, balanced and responsive manner.

<sup>50</sup> Specifically, the proposed rule changes comport with the requirements (i) by balancing the Association's boards and committees (see new NASD By-Laws Article VII, Section 4 and Article IX; new NASD Regulation By-Laws Article IV; new Nasdaq By-Laws Article IV; Delegation Plan I.C., II.C); (ii) by placing primary day-to-day responsibility for regulatory matters with NASD Regulation (see new Delegation Plan section II.A.1); (iii) by providing for the autonomy and independence of the regulatory staff of the NASD and its Subsidiaries (see *id.*); and (iv) by providing for the existence of a substantial, independent internal audit staff that reports directly to an audit committee of the NASD Board (see new NASD By-Laws Article IX, Section 5).

#### B. Effectiveness of the Amendments

The NASD has requested varying effective dates for the amendments contained in this Order.<sup>51</sup> In general, those portions addressing nomination and election procedures will become effective upon issuance of this Order. Immediate effectiveness of these changes will facilitate the nomination and election of members of the NASD, NASD Regulation, and Nasdaq Boards, the NAC, and the Listing Council whose terms of office will begin in 1998.

The remaining changes will become effective at the January 1998 meeting of the NASD Board, which will itself conform to the new balanced compositional requirements contained in this Order. Allowing a period of time between approval of this Order and the effective date will give the Association adequate time to achieve the comprehensive changes to its structure.

Finally, the Commission's temporary approval of SR-NASD-96-20 and SR-NASD-96-29, which is currently scheduled to lapse on November 15, 1997 (to the extent these rule filings are not superseded by the immediately-effective nomination and election procedure amendments), is extended until the first meeting of the NASD Board of Governors in January, 1998.<sup>52</sup>

### V. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, Amendment No. 2 amends the time during which a member may submit agenda items for the annual meeting of NASD members. The Commission believes that this change, combined with those in the initial filing of SR-NASD-97-71 are consistent with the Act, and should enhance both the fair and efficient operation of the NASD and the dispassionate application of the rules and fairness in the NASD's adjudicatory and listing processes, as

<sup>51</sup> See Letter from T. Grant Callery, Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Commission, dated November 12, 1997.

<sup>52</sup> Specifically, the following sections of the corporate governance documents will become effective immediately upon issuance of this Order:

- NASD By-Laws Article VII, Section 9(a), 9(e), and 10 through 14;
- NASD By-Laws Article XX and XXI;
- NASD Regulation By-Laws Article IV, section 4.16
- Nasdaq By-Laws Article IV, Section 4.15.

These provisions will supersede the following provisions of the temporarily approved Plan of Allocation and Delegation of Functions by NASD to Subsidiaries: I.C.2.a; I.C.2.b.3; IC.3., II.B.2. a through II.B.2.c; and III.B.2.a.

<sup>46</sup> 15 U.S.C. 78s(b).

<sup>47</sup> 15 U.S.C. 78o-3.

<sup>48</sup> For example, Section 15A(b)(8) requires that the rules of an association provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership, the barring of any person becoming associated with a member thereof, and for the prohibition or limitation by the association of any person with respect to access to services offered by the association. Section 15A(h)(2) requires a registered securities association when determining whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or member thereof, to notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. Section 15A(h)(3) governs when a registered securities association may summarily suspend a member or a person associated with a member.

<sup>49</sup> In approving this proposal, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).



well as other regulatory activities. Finally, the acceleration of the effectiveness of Amendment No. 2 will enable the Commission to approve its changes at the same time as the other major modifications to the NASD corporate governance procedures proposed in the Notice. Therefore, the Commission believes that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 19(b)(2) of the Act.<sup>53</sup>

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-71 and should be submitted by December 12, 1997.

## VII. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>54</sup> that (a) the proposed rule change (SR-NASD-97-71) is approved, including approval of Amendment No. 2 on an accelerated basis (with the effective date of the nomination and election procedures to be immediate and the effective date of the remaining provisions to occur at the time of the January 1998 meeting of the NASD Board), and (b) temporary approval of the proposed rule changes (SR-NASD-96-20 and SR-NASD-96-29), to the extent not superseded by the immediately effective amendments to SR-NASD-97-71, is extended until the

January 1998 meeting of the NASD Board.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>55</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-30622 Filed 11-20-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39322; File No. SR-NASD-97-78]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Amended Interpretation of IM-8310-2, Release of Disciplinary Information, and the Implementation of Interim Pages in Forms U-4 and U-5

November 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4, thereunder,<sup>2</sup> notice is hereby given that on October 17, 1997,<sup>3</sup> the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASDR").<sup>4</sup> 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

NASDR is proposing to amend the Interpretation on the Release of Disciplinary Information, IM-8310-2 of Rule 8310 of the Procedural Rules of the NASD, to include additional information required to be reported pursuant to the amended Forms U-4, U-5, and BD. Interim pages for Forms U-4 and U-5 also have been filed to facilitate the immediate release of this additional information.<sup>5</sup> Below is the text of the proposed rule change. Proposed new language is an italics.

#### IM-8310-2. Release of Disciplinary Information

(a) The Association shall, in response to a written inquiry, *electronic inquiry*,<sup>6</sup> or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD for Form U-4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information *required to be reported on Form BD or Form U-4* concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, *pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or*

<sup>53</sup> 17 CFR 200.300-3(a)(12).

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

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

<sup>3</sup> On November 6, 1997, the NASD Regulation, Inc. filed an amendment, which among other things, clarifies the reference to "associated person" and explains the absence of the term "issuer" in the definition of "investment-related." See letter from Alden S. Adkins, General Counsel, NASD Regulations, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 6, 1997 ("Amendment No. 1"). On November 12, 1997, the NASD Regulation, Inc. amended its proposal to clarify the definition of "appropriate signatory" and to clarify the implementation dates of the interim Forms and the disclosure of additional information. See letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 12, 1997 ("Amendment No. 2").

<sup>4</sup> The Association submitted a similar proposal on November 25, 1996. See Securities Exchange Act Release No. 37994 (November 27, 1996) 61 FR 64549 (December 5, 1996) (SR-NASD-96-38). After several negotiations among the Commission, the NASD, and the North American Securities Administrators Association, Inc. ("NASAA"), SR-NASD-96-38 has been withdrawn and replaced in its entirety by the current filing. See letter from Joan C. Conley, Corporate Secretary, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 17, 1997.

<sup>5</sup> Copies of Forms U-4 and U-5, containing the interim pages, were submitted as Attachment A to the NASD's rule proposal. A complete set of these revised forms is available for inspection and copying in the Commission's Public Reference Room and is also available from the NASD.

<sup>6</sup> Upon approval of this proposal, the NASD plans to begin responding to electronic inquiries via the Internet on or about January 1, 1998. See Amendment No. 2, p. 1.

<sup>53</sup> 15 U.S.C. 78s(b)(2).

<sup>54</sup> 15 U.S.C. 78s(b)(2).