

proposed rule change was noticed for the full comment period and no comment letters were received. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 3 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-34 and should be submitted by September 4, 1997.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NASD-97-34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 97-21445 Filed 8-13-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38909; File No. SR-NASD-96-29; Amendment No. 5]

### Notice of Filing and Order Granting Temporary Accelerated Approval

August 7, 1997.

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary

Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and The Nasdaq Stock Market, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 5 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 5 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

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

The NASD is proposing to amend the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market, Inc. ("Nasdaq"), following the reorganization of the NASD.

The initial version of the Delegation Plan (with the implementing provisions contained in Rule 0130) was originally filed with the Commission in SR-NASD-96-16. It was published for comment and approved by the Commission on a temporary basis for a period of 90 days.<sup>2</sup> On July 11, 1996, the Commission issued another release publishing for comment three changes to the Delegation Plan and further

approving the Delegation Plan as amended for a period of 120 days.<sup>3</sup> On November 15, 1996 and May 15, 1997, the Commission extended temporary approval of the instant proposed rule change for two additional six month periods.<sup>4</sup>

On April 18, 1997, the NASD filed SR-NASD-97-28, seeking approval of, among other matters, certain proposed amendments to the Delegation Plan.<sup>5</sup> The proposed amendments to the Delegation Plan contained therein were withdrawn by Amendment No. 3 thereto.<sup>6</sup>

The NASD hereby files this Amendment No. 5 to the instant rule filing, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to continue temporary approval of the Delegation Plan, revised to conform to the Rules of the Association, as amended by Release No. 34-38908. Approval until November 15, 1997, the remaining effective period of Amendment No. 4 to the instant rule filing, is requested. During this interval, there will be no further amendments to the Delegation Plan, absent Commission approval of a corresponding Rule 19b-4 filing.

#### II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

<sup>3</sup> Release No. 34-37425. Release Nos. 34-37107 and 34-37425 published the complete text of the rule change.

<sup>4</sup> Release Nos. 34-37957 and 34-38645, respectively.

<sup>5</sup> Securities Exchange Act Release No. 38545 (April 24, 1997), 62 FR 25226 (May 8, 1997) ("Release No. 34-38545"), the Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Proposed Changes in the By-Laws of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, Membership Application Procedures, Disciplinary Proceedings, Other Proceedings, and Other Conforming Changes ("Release No. 34-38545"). The comment period for Release No. 34-38545 expired on June 6, 1997. SR-NASD-97-28 is being approved simultaneously with the instant filing, see Securities Exchange Act Release No. 38908 ("Release No. 34-38908").

<sup>6</sup> See Letter from Alden S. Adkins, Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 11, 1997).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The Commission previously published notice of the proposed rule change and granted accelerated approval thereto for periods of 120 days, six months and six months (Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) ("Release No. 34-37425"), Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1997) ("Release No. 34-37957") and Securities Exchange Act Release No. 38645 (May 15, 1997), 62 FR 28086 (May 22, 1997) ("Release No. 34-38645"), respectively.

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

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose.**

The purpose of this Amendment No. 5 is to ensure continued effectiveness of the Delegation Plan while the Commission considers whether to grant permanent approval to the instant NASD rule filing.

*Description of Delegation Plan:* The Delegation Plan is organized in three principal parts, one for each of the three major entities that will constitute the reorganized self-regulatory organization: the parent corporation, NASD; the regulatory subsidiary, NASD Regulation; and the stock market operating subsidiary, Nasdaq.<sup>7</sup> The Delegation Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each of these entities.

The first part of the Delegation Plan describes the parent corporation, the NASD. The Delegation Plan sets forth the purpose and function of the NASD; the composition of the Board of Governors, including provisions relating to the qualifications for Governors, election procedures, creation of a National Nominating Committee,<sup>8</sup> term of office, vacancies and removal from office; the function, composition and reporting structure of the Audit Committee and the Office of Internal Review; the function and composition of the Management Compensation Committee; and the Commission's access to and status of officers,

directors, employees, books, records and premises of the subsidiaries.

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

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

The Rules of the Association, as amended by Release No. 34-38908, include modifications of the time periods for certain procedures described in the Delegation Plan. The amendments to the Delegation Plan proposed by this Amendment No. 5 conform to these modifications and further amplify the delegation of functions and authority to NASD Regulation.

**2. Statutory Basis for the Proposed Rule Change**

The NASD believes that the proposed rule change as further amended by Amendment No. 5 is consistent with the provisions of Section 15A(b)(2) of the Act<sup>9</sup> in that the terms of the Delegation Plan will provide for the organization of the Association in a manner that will permit the NASD, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the

Association and the federal securities laws.

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

The NASD does not believe that the proposed rule change as further amended by Amendment No. 5 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.<sup>10</sup> However, in connection with the NASD's publication for member vote of proposed amendments to the By-Laws to implement the Delegation Plan in Notice 95-101 (December 11, 1995) ("Notice 95-101"), attached as Exhibit 2 to proposed rule change SR-NASD-96-02, the NASD received three comments which were attached as Exhibit 4 to that proposed rule change. The NASD's statement on the comments received with respect to notice 95-101 is set forth in SR-NASD-96-02 and was published by the Commission in Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996). SR-NASD-96-02 proposed certain of the By-Law amendments issued for member vote in Notice 95-101 in order to permit the reorganization of its Board of Governors consistent with the Delegation Plan submitted in SR-NASD-96-16.

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

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change as further amended by Amendment No. 5 prior to the 30th day after publication in the **Federal Register**.

**IV. Discussion**

The Commission finds that the proposed rule change as further amended by Amendment No. 5 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to

<sup>7</sup> The NASD, NASD Regulation and Nasdaq are collectively referred to herein as the "Association." The Delegation Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as the Securities Dealers Risk Purchasing Group, Inc. and the Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NASD not described in the Delegation Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of Nasdaq. In addition, the Delegation Plan does not address the NASD's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

<sup>8</sup> The National Nominating Committee is composed of at least six and not more than nine members equally balanced between Industry and Non-Industry Committee Members. It is anticipated that there will be at least three Non-Industry Members, including at least two Public Committee Members.

<sup>9</sup> 15 U.S.C. 70a-3

<sup>10</sup> The comment letters received in connection with Release No. 34-38545 did not address the Delegation Plan.

carry out the purposes of the Act to comply with, and enforce compliance by its members and associated persons with, the provisions of the Act, the rules and regulations thereunder, the rules of the NASD and the federal securities laws. Furthermore, the amendments are designed (with amendments to the Rules of the Association simultaneously approved in Release No. 34-38908, as discussed above) to insure a fair representation of the NASD's members in the selection of its directors and administration of its affairs as well as to comply with the public and non-industry participation requirements of the Act. It is envisioned that these rules and any subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(2) in particular and the Act in general.

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

The instant proposed rule change was previously published for comment and approved by the Commission on a temporary basis for periods of 120 days, six months, and six months.<sup>11</sup> The second six month approval period is scheduled to expire on November 15, 1997. No comment letters concerning

the instant proposed rule change were received by the Commission.

Accordingly, the Commission believes that accelerating the approval of the proposed rule change as further amended by Amendment No. 5 will benefit members and the public interest by more fully implementing the reorganization of the NASD and its subsidiaries.<sup>12</sup>

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 4, 1997.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-96-29, as amended by Amendment No. 5, be, and hereby is, approved through November 15, 1997.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97-21446 Filed 8-13-97; 8:45 am]

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#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #2973]

##### State of Alabama

As a result of the President's major disaster declaration on July 25, 1997, I find that Baldwin, Choctaw, and Mobile Counties in the State of Alabama

<sup>12</sup> In approving this rule filing, the Commission has considered the proposed rule filing's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

constitute a disaster area due to damages caused by storms, flooding, and high winds which occurred July 17-22, 1997. Applications for loans for physical damages may be filed until the close of business on September 23, 1997, and for loans for economic injury until the close of business on April 28, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Clarke, Escambia, Marengo, Monroe, Sumter, and Washington Counties in Alabama; Clarke, George, Greene, Jackson, Lauderdale, and Wayne Counties in Mississippi; and Escambia County in Florida.

	Percent
Physical Damage:	
Homeowners with credit available elsewhere .....	8.000
Homeowners without credit available elsewhere .....	4.000
Businesses with credit available elsewhere .....	8.000
Businesses and non-profit organizations without credit available elsewhere .....	4.000
Others (including non-profit organizations) with credit available elsewhere .....	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	4.000

The number assigned to this disaster for physical damage is 297306. For economic injury the numbers are 956800 for Alabama; 956900 for Mississippi; and 957000 for Florida.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 1, 1997.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

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#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #2975]

##### State of Colorado

As a result of the President's major disaster declaration on August 1, 1997, I find that Larimer, Logan, and Morgan Counties in the State of Colorado constitute a disaster area due to

<sup>11</sup> Release Nos. 34-37425, 34-37957, and 34-38645, respectively.