

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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by January 20, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-33830 Filed 12-29-97; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39470; File No. SR-NASD-97-81]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Changes to the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series to Reflect Changes in the Corporate Organization of the National Association of Securities Dealers, Inc. and Its Subsidiaries

December 19, 1997.

On October 31, 1997, the National Association of Securities Dealers, Inc. ("NASD"), through its regulatory subsidiary NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² In this filing, the NASD proposed amendments to (a) Article V of the

NASD Regulation By-Laws; (b) the Rule 1010 Series; (c) the Rule 8000 Series; (d) the Rule 9000 Series; and (e) certain other Rules of the Association, generally to conform such rules to the corporate restructuring of the Association and to make clarifying and technical changes to such rules. Notice of this proposed rule filing was published in the **Federal Register** on December 3, 1997 (as amended, the "Notice").³ The Commission did not receive any comment letters on the filing.

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. 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.⁴ 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 were

³ See Securities Exchange Act Release No. 39350 (November 21, 1997), 62 FR 64000 (File No. SR-NASD-97-81). Amendment Nos. 1 and 2 to the proposed rule filing were filed on November 12, 1997 and November 18, 1997, respectively. The changes contained in these amendments were included in the Notice. See Letter from Joan C. Conley, Secretary, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 12, 1997 (note corrected sender); Letter Amendment No. 2 from Alden S. Adkins, Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 18, 1997. Several additional technical amendments were also included in the Notice. Telephone Conversation between Sharon Zackula, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Office of Market Supervision, Commission (November 20, 1997). Amendment No. 3 to the proposed rule filing, which amended the requested effective date of the proposal and included several additional technical amendments (see discussion *infra* p. 9, fn. 20), was filed on December 12, 1997. Letter Amendment No. 3 from Alden S. Adkins, Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated December 12, 1997.

⁴ NASD Regulation and Nasdaq are collectively referred to herein as the "Subsidiaries."

first proposed and adopted in mid-1996.⁵ Final revisions to the corporate structure were approved on November 14, 1997.⁶

On August 8, 1996, the Commission issued an order pursuant to Section 19(h)(1) of the Act ("SEC Order"), including fourteen undertakings ("Undertakings"),⁷ and a related report pursuant to Section 21(a) of the Act ("21(a) Report").⁸ In these documents, the Commission indicated 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. In response to the Commission's findings in the 21(a) Report and to comply with the terms of certain undertakings, the NASD subsequently proposed amendments to its Rules of the Association.⁹ These changes were approved by the Commission on August 7, 1997.¹⁰ The proposed amendments supplement the changes contained in the Commission's August 1997 order.

II. Description of the Proposal

The Association's proposed rule amendments are intended to (A) conform the Rules of the Association to reflect the terms of the recent corporate reorganization of the NASD, NASD Regulation, and Nasdaq,¹¹ and (B) clarify and simplify certain portions of those Rules of the Association approved in SR-NASD-97-28.¹² The following outlines the proposed amendments.¹³

A. Conforming Amendments

The structural changes to the NASD and its Subsidiaries modified the sizes of the three governing boards, interwove

⁵ See 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).

⁶ Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (File No. SR-NASD-97-71).

⁷ 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).

⁸ 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).

⁹ Securities Exchange Act Release No. 38545 (April 24, 1997) 62 FR 25226 (May 8, 1997) (File No. SR-NASD-97-28), as amended.

¹⁰ Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (Rules of the Association).

¹¹ See Release No. 34-39326 (File No. SR-NASD-97-71).

¹² See Release No. 34-28908.

¹³ A complete list of all changes is contained in the Notice, see *supra* Release No. 34-39350.

¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the membership of such boards and included significant non-industry and public participation throughout the Association's decision making processes. Corresponding changes to the procedures described in the Rules of the Association are required to effect these changes operationally. For example, since all of the members of the Subsidiary governing boards (the NASD Regulation or Nasdaq "Directors") now sit on the NASD Board of Governors, review by both a subsidiary board and the parent board is duplicative. The change in the corporate structure contemplated removal of the subsidiary layer of review, and the proposed amendments effect that change through appropriate regulation.¹⁴

In addition, the corporate restructuring created an adjudication review committee separate from the NASD Regulation Board of Directors. The revised by-laws substituted the new National Adjudicatory Council (the "NAC," a non-board committee) for the National Business Conduct Committee (the "NBCC," composed of NASD Regulation Directors). The proposed amendments replace references to the NBCC with references to the NAC. In addition, the amendments transfer certain responsibilities formerly delegated to the NBCC chair and vice chair, to a new Review Subcommittee of the NAC. The composition and quorum requirements of this subcommittee are set forth in a proposed amendment to Article V of the NASD Regulation By-Laws. Upon approval of the proposed amendments, the Review Subcommittee will have delegated authority to make decisions regarding (a) the administration of disciplinary proceedings during the review and appeal process; (b) the review and acceptance of letters of acceptance, waiver, and consent; (c) the review and acceptance of minor rule plan violation letters; and (d) the review and acceptance of offers of settlement. The corresponding authority of the chair and vice chair to make such determinations will be deleted.

B. Clarifying and Simplifying Amendments

In addition to the conforming amendments described above, the Association is also proposing several clarifying and/or simplifying changes to some of the Rules of the Association approved in SR-NASD-97-28. These changes will (a) allow members to

maintain an electronic version of the NASD Manual as their required copy of this manual; (b) consolidate several rules addressing provision of information within one Rule series; (c) clarify the delegated responsibilities of NASD Regulation's Departments of Enforcement and Market Regulation; (d) allow appointment of persons to serve as observers to disciplinary proceedings; and (e) correct certain minor procedural inconsistencies and/or uncertainties regarding notice, notice periods, service, stays, and exemptions. The particulars of these changes are set forth in detail in the Notice.

III. Discussion

A. The Proposed Amendments

As discussed below, the Commission has determined at this time to approve the NASD's 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.¹⁵ 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.¹⁶

The Commission has evaluated the NASD's proposed rule change in light of the standards and objectives set forth in the Act (particularly Sections 15A¹⁷ and 3(f)¹⁸), the SEC Order, the 21(a) Report as well as the revised corporate restructuring approved in SR-NASD-

97-71. The Commission believes that the proposed changes to the Rules of the Association are consistent with the corporate restructuring, as well as the objectives of the Act, the Undertakings and the 21(a) Report. The proposed rule change, in furthering the purpose of the corporate restructuring by appropriate conforming regulation, should encourage dispassionate performance of the NASD's responsibilities as an SRO.

As set forth in the proposal, the conforming changes will allow the Governors of the NASD Board and the Directors of the Subsidiary boards to direct their attention to crucial governance matters, and will decrease unnecessary duplicative procedures. For example, creation of the NAC and its Review Subcommittee will reduce the administrative burden on board members by eliminating their required service on these bodies, while at the same time protecting the integrity of the review process. Council members, who are nominated in a manner similar to the Governors, selected by the NASD Regulation Board, and subject to the same compositional requirements as the NASD Regulation Board, should be able to perform their important adjudicatory functions without other governance distractions. Elimination of the duplicative subsidiary board review of certain committee decisions will similarly reduce the administrative burden on those Governors who also serve as Subsidiary Directors, without sacrificing their input into the review process.

The clarifying and simplifying modifications will further enhance the Association's ability to perform its self-regulatory function. Permitting use of an electronic NASD manual should lessen the cost and time involved in the maintenance of an up-to-date manual and increase the availability of the regulations therein. Gathering the rules requiring certain persons to provide information to the Association into one Rule series should help its members and other persons to be more aware of these related information sharing obligations, and thereby ease compliance with such rules. Clarifying the respective duties of the Departments of Enforcement and Market Regulation should help these offices to properly identify and perform their appropriate delegated responsibilities. Allowing qualified observers to sit on disciplinary panels should provide an effective training forum for future panelists. Finally, correction of the various inconsistencies and/or uncertainties discovered after approval of the Rules of the Association in SR-NASD-97-28 should help to promote the smooth and just application

¹⁵ U.S.C. 78s(b).

¹⁶ 15 U.S.C. 78o-3.

¹⁷ 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.

¹⁸ In approving this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ While the present rules include two levels of review, an aggrieved party does not have two rights of appeal. Review by the governing boards, referred to as a "call for review" is at the sole discretion of each board.

of such rules, and contribute to and enhance the Association's ability to perform its SRO responsibilities in an objective, balanced and responsive manner.

B. Effectiveness of the Amendments

The Association has requested expedited approval of its proposal, with an effective date of not later than the day prior to the January 1998 meeting of the NASD Regulation Board. Immediate approval, with delayed application will allow publication of the revised Rules of the Association, while allowing the NASD's constituency and the general public time to become familiar with the changes to such rules prior to their implementation. The Association has submitted a related rule filing, SR-NASD-97-90, which conforms the effective dates of its corporate governance documents to the same date.¹⁹ The Commission agrees that expedited approval and a delayed effective date are appropriate for the reasons stated, as well as to ensure that the NASD's constituency and the general public will have adequate time to review the new procedures prior to their implementation.

IV. Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, Amendment No. 3 amends the requested effective date of the proposal, as discussed above, and makes several technical amendments of the same type contained in the Notice.²⁰ The Commission believes that these changes, combined with those in the initial filing of SR-NASD-97-81 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 well as other regulatory activities. Finally, the acceleration of the effectiveness of Amendment No. 3 will enable the Commission to approve its changes at the same time as the other modifications to the NASD Rules of the Association proposed in the Notice. Therefore, the Commission believes that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.²¹

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 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. 3 that are filed with the Commission, and all written communications relating to Amendment No. 3 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-97-81 and should be submitted by January 20, 1998.

VI. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Sections 15A(b) (6), (7), and (8) thereof.²² The proposed rule change is consistent with Section 15A(b)(6) of the Act in that it will promote just and equitable principles of trade by providing fair procedures and standards for membership admission, and fair procedures and consistent treatment for requesting information from members or other persons who are obligated to provide the Association with information. The proposed rule change is consistent with Section 15A(b)(7) in that it furthers the statutory mandate that the Association establish rules providing that its members and persons associated with its members shall be

appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the Rules of the Association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from association with a member, or any other fitting sanction. The rule change is consistent with Section 15A(b)(8) in that it furthers the statutory goals of providing a fair procedure for disciplining members and persons associated with members, fair procedures for admitting or denying membership to any person seeking membership to the Association, fair procedures for barring any person from becoming associated with a member of the Association, and fair procedures for prohibiting or limiting the association of any person with respect to access to services offered by the Association or a member thereof.

The Commission also finds good cause for approving the NASD's proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the changes contained in this rule filing conform the Rules of the Association to the recently revised corporate governance documents of the NASD, NASD Regulation and Nasdaq.²³ The Commission believes that accelerating the effectiveness of the proposal will enable the NASD to complete conformance of its Rules of the Association to the recent corporate restructuring prior to the first Board of Governors meeting implementing the new corporate structure. Thus, the Commission believes that granting accelerated approval to SR-NASD-97-81 is appropriate and consistent with Section 19(b)(2) of the Act.²⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-NASD-97-81), including Amendment No. 3 thereto, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

¹⁹ The corporate governance documents, which include the enacting provisions for the NAC (in the NASD Regulation By-Laws) were approved by the Commission on November 14, 1997. See Release No. 34-39326.

²⁰ The technical amendments: (A) amend paragraphs (d)(1), (e), (f), and (g) of Rule IM-8310-2, *Release of Disciplinary Information*, by (i) deleting the current terms, "National Business Conduct Committee" and "NBCC," and substituting the term "National Adjudicatory Council;" (ii) deleting an erroneous reference to the discretionary review by the NASD Regulation Board; and (iii) replacing erroneous references to two rescinded Rules with reference to the two current Rules; (B) delete an erroneous reference to the Rule 9800 Series in Rule 9110; (C) change an erroneous singular reference in Rule 9270(d)(1)(C) to a plural reference; (D) delete erroneous references to (i) the discretionary review by the NASD Regulation Board, and (ii) Rule 9352, in Rule 9311(b); (E) delete an erroneous reference to a paragraph previously proposed for deletion in Rule 9351(b)(2); (F) change an erroneous singular reference to a plural reference in Rule 9414(b)(1); and (G) change the caption of paragraph (a) in Rule 9610.

²¹ 15 U.S.C. 78s(b)(2).

²² 15 U.S.C. 78o-3.

²³ In SR-NASD-97-71, the Association requested an effective date for that portion of the NASD Regulation By-Laws creating the NAC of not later than the first meeting of the NASD Board in January 1998, which is one day later than the requested date for this rule filing. See Release No. 34-39326. The Association recently filed an amendment to the effective date of the By-Laws creating the NAC, to conform to the effective date contained in this Order. See SR-NASD-97-90.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ *Id.*

²⁶ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-33831 Filed 12-29-97; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 2652]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each letter.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, (703) 875-6644.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 17, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls.

[FR Doc. 97-33806 Filed 12-29-97; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF STATE

[Public Notice 2670]

Delegation of Authority

By virtue of the authority vested in me by the laws of the United States, including the Foreign Assistance Act of 1961, the Arms Export Control Act, and the State Department Basic Authorities Act of 1956, and the memorandum delegation signed by the President on November 4, I hereby delegate to John Holum, during any period in which he serves both in the Office of the Under Secretary of State for Arms Control and International Security Affairs and as Director of the Arms Control and Disarmament Agency, all authorities vested in the Secretary of State

(including all authorities delegated by the President to the Secretary of State by any act, order, determination, delegation of authority, regulation or executive order heretofore or hereinafter enacted or issued) that have been or may be delegated or redelegated to the Under Secretary of State for Arms Control and International Security Affairs.

This memorandum shall be published in the **Federal Register**.

Dated: December 15, 1997.

Madeleine Albright,

Secretary of State.

[FR Doc. 97-33805 Filed 12-29-97; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements filed during the week of December 19, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-97-3243

Date Filed: December 16, 1997

Parties: Members of the International Air Transport Association

Subject:

PTC3 0138 dated December 12, 1997
r1

PTC3 0140 dated December 12, 1997
r2

PTC3 0144 dated December 12, 1997
r3

PTC3 0147 dated December 12, 1997
r4

PTC3 Resolutions (involving US Territories)

Intended effective date: January 15, 1998

Docket Number: OST-97-3244

Date Filed: December 16, 1997

Parties: Members of the International Air Transport Association

Subject:

PTC3 0136 dated December 12, 1997
r1

PTC3 0137 dated December 12, 1997
r2-3

PTC3 0139 dated December 12, 1997
r4-5

PTC3 0141 dated December 12, 1997
r6

PTC3 0142 dated December 12, 1997
r7-8

PTC3 0143 dated December 12, 1997
r9

PTC3 0145 dated December 12, 1997
r10-12

PTC3 0146 dated December 12, 1997
r13-23

PTC3 0148 dated December 12, 1997
r24

PTC3 0149 dated December 12, 1997
r25

PTC3 Resolutions (except US Territories)

Intended effective date: January 15, 1998

Docket Number: OST-97-3265

Date Filed: December 18, 1997

Parties: Members of the International Air Transport Association

Subject:

PTC EUR-J/K 0019 dated November 21, 1997

Europe-Japan/Korea Resos r1-47

Minutes—PTC23 EUR-J/K 0022 dated

December 16, 1997 Tables—PTC23

EUR-J/K Fares 0007 dated

November 21, 1997

Intended effective date: April 1, 1998

Docket Number: OST-97-3264

Date Filed: December 18, 1997

Parties: Members of the International Air Transport Association

Subject:

PAC/Reso/396 dated December 12, 1997

Finally Adopted Resolutions

Minutes—PAC/Meet/150 dated

December 10, 1997

r-1-814 r-4-820d r-7-854

r-2-814e r-5-824r

r-3-814ff r-6-850

Intended effective date: February 1, 1998

Docket Number: OST-97-3263

Date Filed: December 18, 1997

Parties: Members of the International Air Transport Association

Subject:

Comp Telex Mail Vote 900

Fares from Canada (Excluding the US/UST)

Amendments to Mail Vote 900

Intended effective date: January 5, 1998

Docket Number: OST-97-3262

Date Filed: December 18, 1997

Parties: Members of the International Air Transport Association

Subject:

PTC12 NMS-ME 0032 dated
December 16, 1997

North Atlantic-Mideast Expedited
Resos

r1-5 r-1-02h r-3-070g r-5-090p

r-2-008z r-4-073m

Intended effective date: February 1, 1998

Paulette V. Twine,

Documentary Services.

[FR Doc. 97-33904 Filed 12-29-97; 8:45 am]

BILLING CODE 4910-62-P