

POSTAL RATE COMMISSION**Notice of Commission Visits**

April 12, 1996.

Notice is hereby given that members of the Postal Rate Commission and certain advisory staff members will visit the following businesses and U.S. Postal Service mail processing facility to observe their operations:

Columbia House, Terre Haute, Indiana,
April 15-16, 1996

U.S. Postal Service Air Hub Operation,
Indianapolis, Indiana, April 16,
1996

BMG Direct Marketing, Inc.,
Indianapolis, Indiana, April 17,
1996

Federal Express Hub, Memphis,
Tennessee, May 14-15, 1996

Reports of these visits will be placed on file in the Commission's Docket Room.

FOR FURTHER INFORMATION CONTACT:

Margaret P. Crenshaw, Secretary of the Commission at 202/789-6840.

Margaret P. Crenshaw,
Secretary.

[FR Doc. 96-9507 Filed 4-17-96; 8:45 am]

BILLING CODE 7715-01-P

POSTAL SERVICE**Board of Governors; Addition to Closed Meeting Agenda; Sunshine Act Meeting**

By telephone vote on April 11, 1996, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its May 6, 1996, meeting, closed to public observation, consideration of a funding request for delivery vehicles.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate a proposed management action.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public

observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268-4800.

Thomas J. Koerber,
Secretary.

[FR Doc. 96-9751 Filed 4-16-96; 2:05 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37106; File No. SR-NASD-96-02]

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 Changes in the Structure of the NASD Board of Governors

April 11, 1996.

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 January 16, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")¹ the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change for a period of ninety (90) days.

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

Following is the full text of a proposed rule change to amend the

¹ The NASD subsequently made three amendments to its filing. On January 24, 1996, the NASD submitted the final report of the vote with respect to Notice to Members 95-101. On April 10, 1996, the NASD submitted Amendment No. 2 which superseded the original rule filing and eliminated those parts of the original rule filing that proposed to eliminate Article V to the By-Laws and amend Section 7 to Article VII of the By-Laws to establish a new procedure for nomination of the members of the Board of Governors. These amendments are not being proposed at this time. On April 11, 1996, the NASD submitted its third and fourth amendment to this filing which superseded all previous amendments and the original filing. The NASD at this time is proposing to amend Sections 4 and 6 of Article VII of its By-laws on a temporary 90 day basis. See letter from T. Grant Callery, NASD, to Mark Barracca, SEC (April 11, 1996).

NASD's By-Laws to reconfigure the NASD's Board of Governors. Below is the text of the proposed rule change.² Proposed new language is italicized; proposed deletions are in brackets.

BY-LAWS**ARTICLE VII****BOARD OF GOVERNORS**

Composition and Qualifications of the Board

Sec. 4. (a) The management and administration of the affairs of the Corporation shall be vested in a Board of Governors composed of [from twenty-five to twenty-nine Governors as determined from time to time by the Board. The Board shall consist of: (1) At least thirteen but not more than fifteen Governors to be elected by the members of the various districts in accordance with the provisions of subsection (b) hereof; (2) at least eleven but not more than thirteen Governors to be elected by the Board in accordance with the provisions of subsection (c) hereof; (3) the President of the Corporation to be selected by the Board in accordance with the provisions of Article X, Section 2 of the By-Laws. The Board, in exercising its power to determine its size and composition under this subsection (a), shall be required to select its members in a manner such that when all vacancies, if any, are filled, the number of Governors elected by the members of the various districts in accordance with subsection (b) hereof shall exceed the number of Governors (including the President) not so elected.

(b) The several districts shall be represented on the Board. Each district shall elect at least one Governor. The Board shall determine from time to time which districts, if any, shall elect more than one Governor, so as to provide fair representation of the Corporation's members and of its various districts on the Board. The determination of which districts shall elect more than one Governor need not be submitted to the membership for approval and shall become effective at such time as the Board may prescribe. The Board shall, from time to time, consider the fairness of the representation of members and of the various districts on the Board. Whenever the Board finds any unfairness in such representation to exist, it shall make appropriate changes in the number of boundaries of the

² Article and section designations of the provisions covered by this rule change will be modified to conform to a new rule numbering system for the NASD Manual anticipated to be effective no later than May 1, 1996. See Exchange Act Release No. 36698 (January 11, 1996), 61 FR 1419 (January 19, 1996).

districts or the number of Governors elected by each district to provide fair representation of members and districts.] *five or more members, the number thereof to be determined from time to time by resolution of the Board of Governors, and shall include at all times: (1) the Chief Executive Officer; (2) one or more Non-Industry Governors representative of issuers and investors and not associated with a member of the Corporation; (3) one or more Industry Governors; and (4) a majority of Non-Industry Governors, unless (A) there shall be a vacancy in the position of a Non-Industry Governor, in which case such vacancy shall be filled by a person satisfying the criteria for a Non-Industry Governor in accordance with the provisions of Section 6 of this Article or (B) a Governor elected as a Non-Industry Governor becomes an Industry Governor and his remaining term of office is six months or less. If a Governor elected as a Non-Industry Governor becomes an Industry Governor and his remaining term of office is more than six months, or a Governor elected as an Industry Governor becomes a Non-Industry Governor and his remaining term of office is more than six months, he shall be automatically removed from office unless the Board determines otherwise.*

(c) The Board shall elect (1) at least three Governors representative of investors, none of whom are associated with a member or any broker or dealer; (2) at least three Governors representative of issuers, at least one of whom is not associated with a member or any broker or dealer; (3) at least three Governors chosen from members; (4) at least one Governor representative of the principal underwriters of investment company shares or affiliated members; and (5) at least one Governor representative of insurance companies or insurance company affiliated members.]

Term of Office of Governors

Sec. 5. No change.

[Succession to Office]

Filling of Vacancies

Sec. 6. (a) [The office of a retiring Governor elected under subsection (b) of Section 4 of this Article shall be filled by the election of a Governor from the same district as that of the retiring Governor. The office of a retiring Governor elected under subsection (c) of Section 4 of this Article shall be filled by election by the Board as provided in subsection (c) of Section 4 of this Article.] *Any vacancy in the office of a Governor, whether occurring by reason*

of death, disability, disqualification, removal, or resignation, other than a vacancy occurring by reason of an increase in the size of the Board, shall be filled by majority vote of the remaining Governors then in office and any person elected to fill such vacancy shall satisfy the qualifications and criteria for the governorship being filled as provided in Section 4 of this Article.

(b) [Notwithstanding subsection (a) of this Section 6, the Board shall prescribe the succession of office in cases affected by a change in the number of Governors constituting the Board, the composition of the Board, the number or boundaries of districts, or the number of Governors elected by a district.] *Any vacancy in the office of a Governor occurring by reason of an increase in the size of the Board shall be filled by majority vote of the Board and any person elected to fill such vacancy shall satisfy the criteria for such newly created governorship as shall be established by resolution of the Board, provided that the filing of any such vacancy shall not be inconsistent with any other provision of these By-Laws.*

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

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

(a) Background

In 1995, the NASD Board of Governors ("Board") appointed The Select Committee on Structure and Governance (the "Select Committee") to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. The Select Committee reported to the Board of Governors at the September 1995 meeting and recommended, among other things, the establishment of two distinct subsidiaries; one to perform the regulatory functions of the NASD and

the other to run The Nasdaq Stock Market.SM The Select Committee recommended that each subsidiary have an independent Board of Directors and that the NASD remain as parent corporation overseeing the operations of both subsidiaries.

The NASD is proposing to amend Article VII of the NASD By-Laws in order to begin the restructuring necessary to implement the principles articulated in the report of the Select Committee. The Board of Governors of the NASD has adopted the Select Committee proposal that the NASD create a new subsidiary responsible for regulation and the provision of member and constituent services, with the NASD retaining responsibility for general oversight of the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries; The Nasdaq Stock Market, Inc. and NASD Regulation, Inc.³ ("NASDR"), and final policy making authority for the Association as a whole.⁴ The Board also adopted Select Committee proposals to implement policies that will: ensure a balance of non-industry and industry representation on Boards of Directors of The Nasdaq Stock Market and NASDR; and reduce the size and structure the Board of Governors of the NASD to have a majority of non-industry members.

In summary, the NASD is proposing to reorganize its Board of Governors as a majority non-industry board comprising the CEO and "Industry" and "Non-Industry" Governors, and reduces the minimum size of the Board from 25 to 5. The term "Industry Governor" means a persons associated with an NASD member. The term "Non-Industry Governor" means a person representing investors and issuers pursuant to criteria that will be adopted by the NASD Board of Governors. The implementation plan adopted by the NASD Board at its November 1995 meeting specified that beginning in the second quarter of 1996 the NASD Board of Governors will be comprised of nine persons: the CEO, three Industry, and five Non-Industry Governors.

Simultaneously with the submission of this rule change, the NASD is also submitting a temporary rule change in SR-NASD-96-16 to propose a Plan of Allocation and Delegation of Functions By NASD to Subsidiaries that sets forth the purpose, functions, governance, procedures, and responsibilities of the

³ A new subsidiary has been incorporated as "NASD Regulation, Inc." to carry out the NASD's obligations to regulate the broker/dealer industry.

⁴ The Nasdaq Stock Market, Inc. is a wholly-owned subsidiary of the NASD.

NASD, the NASDR and Nasdaq following the reorganization of the NASD.⁵

Description of Proposed Amendments
Article VII of the By-Laws

Section 4—Composition of the Board

The NASD is proposing to delete rule language relating to the method by which representatives of the NASD's District Offices are elected to the Board of Governors and to add new rule language that would require that the Board of Governors be composed of at least five members, with the exact number to be determined from time-to-time by the Board of Governors. The proposed new provision would require that the NASD Board of Governors include the Chief Executive Officer; one or more Non-Industry Governors, representative of issuers and investors and not associated with a member of the NASD; one or more Industry Governors; and a majority of Non-Industry Governors. "Industry Governor" means a person associated with an NASD member. The term "Non-Industry Governor" means a person that satisfies criteria that will be adopted from time-to-time by the NASD Board of Governors.⁶ An exception to the latter requirement is provided for situations where there is a vacancy in the position of a Non-Industry Governor or a person elected as a Non-Industry Governor becomes an Industry Governor at a time when the person's remaining term of office is no more than six months. The proposed new provision also provides that if a Non-Industry Governor becomes an Industry Governor at a time when the person's remaining term of office is more than six months, the person will be removed from office unless the Board of Governors determines otherwise.

The NASD is also proposing to delete Subsection (c) to Section 4 which currently sets forth the requirements for the composition of the Board of Governors, which the NASD is herein proposing be included in the amendments.

Section 6—Succession to Office

The NASD is proposing to delete the current language of Subsection (a) which provides that, in case of an in-term vacancy, a Governor elected from a District will be replaced by a successor from that District, as District representatives will not serve on the

Board of Governors of the NASD. Instead, District representatives will serve on the Board of the NASD's regulatory subsidiary, NASDR. The NASD is proposing to retitle this section "Filling of Vacancies." The proposed new rule language under Subsection (a) would require that all vacancies on the NASD's Board of Governors that occur during a term of office of a sitting Governor will be filled by a majority vote of the remaining Governors. The provision further clarifies that any person so elected shall be required to fulfill the criteria set forth in new Section 4.

The NASD is also proposing to delete the current language of Subsection (b) which authorizes the Board to prescribe the succession of offices where there is a change in the number of Governors comprising the Board, the number of boundaries of Districts, or the number of Governors elected by each District. New rule language is proposed that would provide that any vacancy in the office of Governor that occurs by reason of an increase in the size of the Board shall be filled by a majority vote of the Board and that any person so elected is required to fulfill the criteria set forth in new Section 4.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act.⁷ in that the restructured organization will: (1) enhance the NASD's ability to carry out its regulatory obligations under the Act and enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the NASD; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not solicited with respect to the proposed rule

change published for member vote in Notice to Members 95-101 (December 11, 1995)⁸ (attached as Exhibit 2 to the rule filing) or the publication of an explanation of planned changes to the NASD's disciplinary and enforcement procedures published for information in Notice to Members 95-102 (December 11, 1995) (attached as Exhibit 3 to the rule filing). Nonetheless, three comments were received with respect to the proposed rule change published in Notice to Members 95-101 and the concepts included in Notice to Members 95-102 that are attached as Exhibit 4 hereto. Two comments were opposed to the proposed rule change and one comment was in favor, with a request for modification of the rule change.

One Commentor (No. 2) indicated that the member had voted "yes" with respect to the proposed rule change, but recommended that the industry would be more effectively served by a structure that provides for minority non-industry public representation on the Boards of the NASD and the two operating subsidiaries. This Commentor also asked that it receive information related to the budget for the reorganization and the NASD's plan for funding the changes.

Another Commentor (No. 3) stated that the NASD was being turned over to the SEC.

One Commentor (No. 1) was opposed to the proposed rule change and stated in a cover letter that the NASD was relinquishing self-regulation and peer review of disciplinary matters. The Commentor stated that these are principles basic to why the NASD was formed and why it has stayed in existence. In a separate letter, attached as an exhibit to the cover letter, the Commentor states that there was extensive consideration given to the formation of the NASD and that there is no evidence that the organization was to be anything else but self-regulatory. This Commentor states, " * * * we are taking the 'self' out of regulatory and making it an 'outside' regulatory organization * * * ." The Commentor objects to the inclusion on the Board of the NASD of people with no knowledge of the securities business and the elimination of District representation on the Board. The Commentor does not believe that the peer review system for disciplinary matters should be eliminated. The Commentor also argues that in light of the dramatic changes

⁵ See, Securities Exchange Act Release No. 37107 (April 11, 1996).

⁶ Non-Industry Governors will be "representative of issuers and investors and not associated with a member of the Corporation."

⁷ 15 U.S.C. § 78o-3.

⁸ Notice to Members 95-101 also proposed to eliminate Article V to the By-Laws and amend Section 7 to Article VII of the By-Laws to establish a new procedure for nomination of the members of the Board of Governors. These amendments are not being proposed at this time. See also note 1, *supra*.

being proposed, there should be time and opportunity for public comment and objects that there was less than a month over a holiday period to complete the ballot associated with Notice to Members 95-101.

This Commentor urges that the proposed changes set forth in the two notices will result in inefficiency and ineffectiveness. It is argued that greater industry participation is needed on all levels and that there should be greater shared responsibility with the SEC.

The Commentor states that the proposed changes are not adequately supported by the report of the Select Committee, pointing out that the 200 interviews did not include industry persons in an industry with over 500,000 individual registered persons and over 5,400 member firms and that the report of the Select Committee states that the "NASD has done its job exceedingly well." The Commentor argues that the significant changes proposed by the NASD should be accompanied by greater industry consensus and states the Commentor's belief that the proposal is intended only to "appease" the public perception.

In response to the foregoing comments, the NASD believes that the NASD Select Committee on Structure and Governance did the most thorough analysis of this organization in the history of the NASD. The Select Committee concluded that the NASD has discharged its responsibilities "professionally and reasonably" but not "with perfection or without difficulty * * *". In particular, the Select Committee determined that the NASD's governance structure had failed to keep pace with the significant growth and continuing evolution of the Nasdaq market, and the concomitant expansion of the NASD's regulatory responsibilities. The Select Committee concluded that the structure of the NASD would benefit from increasing public representation on the NASD's governing bodies. The Select Committee found, in this regard, that public governors on the NASD's Board constitute 21% of the Board in comparison to 50% public membership on the Boards of other self-regulatory organizations. The Select Committee pointed out that majority public representation was necessary to ensure adequate representation of the public interest as the NASD carries out its quasi-governmental functions; to maintain and enhance Nasdaq's competitive position; and to preserve public confidence in the NASD's oversight of the broker/dealer profession.

With respect to the Commentors' concerns regarding the potential elimination of self-regulation, the Select Committee stated that they believed that such greater public participation on the Boards of the NASD and its subsidiaries would not detract from self-regulation. The Select Committee believed that public confidence in the self-regulatory process would be enhanced by giving non-members a more significant role in the decision-making process and that the self-regulatory concept is not sacrificed by increasing public representation on the NASD's governing Boards. Finally, the Select Committee pointed that NASD members would still be fairly represented in the Association's affairs and have ample opportunity to bring their expertise and viewpoint to bear.⁹

With respect to the NASD's disciplinary process, which was focused on by Commentor No. 3, the Select Committee indicated that the core of the NASD's disciplinary process was sound, but emphasized that the disciplinary process had become more contentious, complex and consequential than the existing system was designed to accommodate. The Select Committee pointed out that the issues that the NASD addresses today increasingly turn on questions of law rather than industry standards and practice. Further, the NASD is now more likely to impose more severe penalties when infractions are found. These changes in the disciplinary environment lead to the greater likelihood that respondents in NASD disciplinary actions will more often retain counsel and NASD hearings have increasingly resembled a courtroom, rather than the traditional business forum for which the existing procedures were designed. As a result, the Select Committee recommended that the NASD adopt procedures and rules that would enhance the fairness and orderly conduct of the more complex and contentious disciplinary proceedings that now are prevalent.¹⁰

The NASD believes that the proposed rule change to amend the NASD By-Laws will begin the restructuring necessary to implement the principles set forth in the report of the Select Committee and that such changes will benefit the membership by enhancing public confidence in the NASD's regulation of the securities industry.

⁹ See, Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors ("Report"), at C-12, C-13, C-21.

¹⁰ Report, at C-17, C-21, C-22.

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

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register.

IV. Discussion

The Commission finds that the proposed rule change 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 and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to be able to carry out the purposes of the Act and to comply with, and enforce compliance by its members and associated persons, with the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (subject to further changes consistent with the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries to be submitted to the NASD membership) to assure a fair representation of the NASD's members, in the selection of its directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these temporary rules and subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(6) in particular and the Act in general.

The Commission finds good cause for temporarily approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that the proposed rule change is intended to enhance the NASD's ability to carry out its regulatory obligations under the Act by restructuring the NASD's Board of Governors in conformance with the recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The proposed changes to the structure of the Board would also be in conformance the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries, submitted in a separate rule filing to the SEC, that set forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the

NASDR and Nasdaq following the reorganization of the NASD. Because the NASD's Board of Governors has been reorganized to be consistent with the proposed rule change and is to hold its first meeting on April 11, 1996, accelerating approval of the proposed rule change on a temporary basis will benefit members and the public interest by permitting the NASD Board of Governors to conduct business at its first meeting.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 9, 1996.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved and effective through July 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-9511 Filed 4-17-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37107; File No. SR-NASD-96-16]

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.

April 11, 1996.

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 April 10 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed¹ with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change for a period of ninety (90) days.

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

The NASD is proposing to amend its rules to: (1) add new Rule 0130² to the NASD's rules delegating to the subsidiaries of the NASD, NASD Regulation, Inc. ("NASDR") and The Nasdaq Stock Market, Inc. ("Nasdaq"), the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Securities Exchange Act of 1934 ("Act"), and (2) adopting a Plan of Allocation and Delegation (Plan) setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

Below is the text of the proposed rule change. All language is new.

¹ On April 11, 1996, the NASD filed an amendment to its filing. This amendment supersedes the original filing. This Notice reflects the amendments.

² The SEC recently approved rule filing SR-NASD-95-51 which reorganizes the NASD Manual. The proposed new rule contained in this rule filing is numbered according to the numbering methodology adopted with the new Manual.

0130 Delegation, Authority and Access

(a) The National Association of Securities Dealers, Inc., delegates to its subsidiaries (NASD Regulation, Inc. and The Nasdaq Stock Market, Inc., hereinafter "Subsidiaries") the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Securities Exchange Act of 1934 ("Act").

(b) Notwithstanding any delegation of authority to the Subsidiaries pursuant to this rule, the staff, books, records and premises of the Subsidiaries are the staff, books, records and premises of the Association subject to oversight pursuant to the Act, and all officers, directors, employees and agents of the Subsidiaries are the officers, directors, employees and agents of the Association for purposes of the Act.

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as "NASDR") and The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. Governors, Directors and Committee Members

The following definitions are applicable to Governors of the NASD, Directors of the Subsidiaries, and Members of Committees of the NASD and the Subsidiaries.

1. "Industry" Governors, Directors or Committee Members shall include (a) officers, directors and employees of brokers and dealers and persons who have been employed in any such capacity at any time within the prior three years; and (b) persons who have consulting or employment relationships with or provide professional services to the Association and persons who have had any such relationship or provided any such services at any time within the prior three years.

2. "Non-industry" Governors, Directors or Committee Members shall be (a) Public Governors; (b) officers and employees of issuers of securities listed on the Nasdaq Stock Market or traded in the over-the-counter market; (c) persons affiliated with brokers and dealers that

¹¹ 17 CFR 200.30-3(a)(12).