

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.<sup>11</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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**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") filed<sup>1</sup> 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 0130<sup>2</sup> 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.

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

<sup>2</sup> 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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (d) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and (e) other individuals who would not be Industry Governors, Directors or Committee Members.

3. "Public" Governors, Directors or Committee Members shall be non-industry persons who have no material business relationship with a broker, dealer or the Association.

#### *B. Functions and Authority of NASD*

The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A. and III. A, the NASD has delegated certain authority and functions to its subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the Exchange Act or as set forth in the articles of incorporation or the by-laws is hereby reserved, except as expressly delegated to the subsidiaries. In addition, the NASD expressly retains the following authority and functions:

1. To exercise overall responsibility for ensuring that the Association's statutory and self-regulatory obligations and functions are fulfilled.
2. To delegate authority to the Subsidiaries to take actions on behalf of the NASD.
3. To elect the Subsidiary Boards of Directors.
4. To review the rulemaking and disciplinary decisions of the Subsidiaries (See Sections II.C. and III.C. below).
5. To coordinate actions of the Subsidiary Boards as necessary.
6. To resolve any disputes between the Subsidiaries.
7. To administer common overhead and technology of the Subsidiaries.
8. To administer the Office of Internal Review as provided in Section I.D.4 below.
9. To manage external Association relations on major policy issues.

10. To direct the Subsidiaries to take action necessary to effectuate the purposes and functions of the Association.

#### *C. Board of Governors*

##### 1. Composition

The NASD Board of Governors ("NASD Board") shall be composed of at least Nine (9) and no more than Thirteen (13) Governors, a majority of whom shall be Non-industry (including at least Two (2) Public Governors). The Chief Executive Officer ("CEO") of NASD shall be a Governor. In the event that the NASD Board shall consist of Eleven (11) or more Governors, at least Three (3) shall be Public Governors.

##### 2. Election Procedures

a. Commencing with the selection of Governors to take office in April of 1997, Governors (except the CEO of NASD) shall be elected by a majority vote of those members of the NASD casting ballots on a slate of nominees presented to the NASD membership by the National Nominating Committee for election by secret ballot.

b. National Nominating Committee:

(1) The National Nominating Committee shall be composed of at least Six (6) and not more than Nine (9) members, equally balanced between Industry and Non-industry Committee Members (including at least Two (2) Public Committee Members). In the event that the Nominating Committee shall consist of Seven (7) or more members at least Three (3) shall be Public Committee Members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-industry Committee Members shall be in the majority. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD. No more than three of the Committee Members and no more than two of the Industry Committee Members shall be current members of the NASD Board or of the Board of Directors of one of the Subsidiaries (collectively the "Association Boards"). Any member of the National Nominating Committee who is a current member of any Association Board shall be in his/her final year of service on any Association Board.

(2) Members of the National Nominating Committee shall be appointed annually by the NASD Board

and may be removed for cause by a majority vote of the NASD Board.

(3) The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.

##### 3. Contested Elections

a. A candidate for the NASD Board who has not been nominated may be included on the ballot if the candidate presents duly executed petitions to the National Nominating Committee demonstrating that such candidate has the support of Two (2) percent of the members of the NASD.

b. A candidate for the NASD Board shall be certified by the National Nominating Committee and included on the ballot only if the Committee certifies that the candidate's petitions are duly executed by the requisite number of members of the NASD and that the candidate meets the qualifications for the position to be filled, as defined in Section I.A. above.

##### 4. Term of Office

a. Each Governor shall hold office for a term of not more than three years, or until a successor is elected and qualified, or until death, disqualification, resignation, or removal. Except as provided in paragraph (b) and (c), Governors may not serve more than two consecutive terms of office on any Association Board.

b. The CEO of the NASD shall serve as a member of the NASD Board until a successor is selected and qualified, or until death, resignation, disqualification, or removal.

c. Where a Governor is appointed to fill a term of less than one year, such Governor shall not be precluded from serving two additional terms of office.

##### 5. Vacancies

a. If a Governor position becomes vacant before the expiration of the Governor's term of office, the National Nominating Committee shall recommend, and the NASD Board shall elect by majority vote of the remaining Governors, a person satisfying the criteria for a Governor position of the type (Industry, Non-industry or Public), vacated as defined in Section I.A. above, unless such Governor has a remaining term of office of no more than six months, in which case no replacement will be required.

b. If a Governor no longer satisfies the criteria for the category in which he or she was elected (Industry, Non-industry or Public) and has a remaining term of office of more than six months, such

Governor shall be automatically removed from office unless the remaining members of the NASD Board determine otherwise by a majority vote and the failure to remove the Governor does not affect the proportional representation set forth in Section I.C.1. above.

#### *D. Audit Committee*

1. The Audit Committee shall be a committee of the NASD Board and shall include the following functions:

a. To ensure the existence of adequate controls and the integrity of the financial reporting process of the Association.

b. To recommend to the NASD Board, and to monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD.

c. To direct and oversee all the activities of the Association's internal review function, including but not limited to management's responses to the internal review function.

2. Composition: The Audit Committee shall be composed of Four (4) or Five (5) members of the NASD Board, none of whom are officers or employees of the Association. The Committee shall include at least one Public Committee Member who shall serve as Chairperson of the Committee. The Committee shall have no more than two Industry Committee Members. If the Committee shall have Four (4) members it shall have not more than One (1) Industry Committee Member. In the event that the size of the NASD Board shall at any time consist of Eleven (11) or more members, the Audit Committee shall include Two (2) Public Committee Members. In addition, each Subsidiary shall designate a Public Member of its Board as a liaison to the Audit Committee. The Audit Committee may consult with that person on issues relating to the functions of the Subsidiary, but neither the liaison nor any officer or employee of the Association shall serve on the Audit Committee in any voting or non-voting capacity.

3. No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company or individual if he or she has a material interest in, or a professional, business or personal relationship with, that member, company or individual or if such participation shall create an appearance of impropriety. Committee members shall consult with the General Counsel of NASD to determine if recusal is necessary. In the event that a member of the Committee is recused from

consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Committee.

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

#### *E. Management Compensation Committee*

1. The Management Compensation Committee shall be a Committee of the NASD Board and shall have the following functions: To consider and recommend compensation policies, programs and practices for employees of the Association.

2. Composition: The Management Compensation Committee shall be composed of Four (4) or more Members of the NASD Board, equally balanced between Industry and Non-industry Governors. If at any time there shall be an odd number of members of the Management Compensation Committee, Non-industry Committee Members shall be in the majority.

#### *F. Access to and Status of Officers, Directors, Employees, Books, Records and Premises of Subsidiaries*

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Section II.A. and III.A. below, the staff, books, records and premises of the Subsidiaries are the staff, books, records and premises of the NASD subject to oversight pursuant to the Securities Exchange Act of 1934 ("Act"), and all officers, directors, employees and agents of the Subsidiaries are officers and directors, employees and agents of the NASD for purposes of the Act.

#### II. NASD Regulation, Inc. ("NASDR")

##### *A. Delegation of Functions and Authority*

1. The NASD hereby delegates to the NASDR and the NASDR assumes the following responsibilities and functions as a registered securities association:

a. To establish rules and regulations for NASD members including, but not

limited to fees and membership requirements and the Code of Arbitration and Mediation Procedure.

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) arbitration of disputes among and between NASD members, associated persons and customers, (ii) public and private sale or distribution of securities including underwriting arrangements and compensation, (iii) financial responsibility, (iv) qualifications for NASD membership and association with NASD members, (v) clearance and settlement of securities transactions, (vi) NASD member advertising practices, (vii) administration, interpretation and enforcement of Association rules, (viii) administration and enforcement of Municipal Securities Rulemaking Board ("MSRB") rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, and (ix) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

c. To take necessary or appropriate action to assure compliance with Association policy, Association and MSRB rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.

d. To administer programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market.

e. To examine and investigate NASD members and associated persons to determine if they have violated Association or MSRB rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer, interpret or enforce.

f. To administer Association enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions.

g. To administer the Association's office of professional hearing officers.

h. To conduct arbitrations, mediations and other dispute resolution programs.

i. To conduct qualification examinations and continuing education programs.

j. To operate the Central Registration Depository ("CRD").

k. To determine whether applicants for NASD membership have met the requirements for membership established by the Association.

l. To place restrictions on the business activities of NASD members consistent with the public interest, the protection of investors and the federal securities laws.

m. To determine whether persons seeking to register as associated persons of NASD members have met such qualifications for registration as may be established by the Association, including whether statutorily disqualified persons will be permitted to associate with particular NASD members and the conditions of such association.

n. To oversee all District Office activities.

o. To establish the annual budget and business plan for NASDR.

p. To determine allocation of NASDR resources.

q. To establish and assess fees and other charges on NASD members, persons associated with NASD members and others using the services or facilities of NASDR.

r. To manage external relations on enforcement, regulatory and other policy issues with Congress, the Securities and Exchange Commission ("SEC"), state regulators, other self-regulatory organizations, business groups, and the public.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

#### *B. Board of Directors*

1. Subsequent to January of 1997, the NASDR Board of Directors ("NASDR Board") shall be composed of at least Twenty-one (21) and no more than Twenty-five (25) Directors. The President of NASDR shall be a member of the NASDR Board and the remaining members shall be equally balanced between Industry and Non-industry Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. The NASDR Board shall include Seven (7) representatives of NASD members representing geographical regions defined by the NASDR Board, and at least Three (3) at-large industry representatives. The

NASDR Board shall include at least Ten (10) Non-industry Directors, including at least Three (3) Public Directors. In the event that the NASDR Board shall consist of more than Twenty-two (22) Members, at least Four (4) shall be Public Directors. The NASDR Board shall include representatives of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member. The CEO of NASD shall be an ex-officio non-voting member of the NASDR Board.

#### *2. Election Procedures.*

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the NASDR Board.

b. The Seven (7) Industry Members of the NASDR Board shall be nominated by Regional Nominating Committees for consideration by the National Nominating Committee. A Regional Nominating Committee shall consist of equal numbers of members from each district comprising the regions and members shall be selected by the District Committee for that District.

c. Any officer, director or employee of an NASD member who has not otherwise been nominated by the Regional Nominating Committee may seek nomination if the candidate presents duly executed petitions to the Regional Nominating Committee for the appropriate geographical region demonstrating that such candidate has the support of at least Ten (10) percent of the NASD members in that region. The Regional Nominating Committee shall submit the names of its nominees and of all the candidates presenting qualifying petitions to the members in that region for nomination by secret ballot. The Regional Nominating Committee shall nominate to the National Nominating Committee the candidate receiving the most votes.

d. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under Section I.C.4. and 5. above.

#### *C. NASDR Board Procedures*

1. Disciplinary Action—Any initial disciplinary decision of the Association, including dismissals, may be appealed to the NBCC within 15 calendar days, or called for review by the NBCC within 45 calendar days, as set forth in the Code of Procedure. A decision of the NBCC may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not

later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or NASD Board. Any disciplinary decision not appealed or called for review shall become the final action of the Association upon the expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

#### *2. Statutory Disqualification*

Decisions—Any decision of the NBCC with respect to statutory disqualification may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or the NASDR Board. Any decision that is not called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

3. Rule Filings—Any rule change adopted by the NASDR Board that imposes fees or other charges on persons or entities other than NASD members or that the NASDR Board refers to the NASD Board because in the view of the NASDR Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the NASDR Board does not refer a rule change to the NASD Board for review, the NASDR Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the NASDR Board's action but which is 15 calendar days or more following the action of the NASDR Board. During the process of developing rule proposals, NASDR staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the NASDR Board.

#### *D. Supplemental Delegation Regarding the Formation of Committees*

1. The NASDR Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the NASDR Board in carrying out the functions and authority delegated to the NASDR by the NASD.

Such delegations shall be in conformance with law, the charter and the by-laws and the requirement as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the NASDR Board in accordance with procedures established by the NASDR Board.

(a) National Business Conduct Committee—A National Business Conduct Committee may be created for the purpose of:

(i) Hearing and deciding appeals of initial disciplinary decisions of the Association.

(ii) Considering and recommending to the NASDR Board policy and rule changes relating to the business and sales practices of NASD members and associated persons.

(iii) Considering and recommending Association enforcement policies, including policies with respect to fines and other sanctions.

(b) The NBCC shall be composed of at least Eight (8) members of the NASDR Board equally balanced between Industry and Non-industry Committee Members (including at least one Public Member). If at any time there shall be an odd number of Committee Members, a majority of the Members shall be Non-industry. Each NBCC Member shall be elected to serve a one-year term.

2. Other Committees—With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in 1. above, such committee shall be created in accordance with the by-laws by resolution or resolutions adopted by a majority of the whole NASDR Board.

### III. Delegation to Nasdaq

#### A. Delegation of Functions and Authority

1. The NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.

b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports and comparisons of transactions.

c. To collect, process, consolidate and provide to NASDR the information requisite to operation of the surveillance audit trail.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over-the-counter market, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. To develop and adopt rules, interpretations, policies and procedures to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate, and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non-discriminatory manner.

h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or the trading in the third market for securities listed on a registered exchange.

i. To develop, adopt and administer rules governing listing standards applicable to securities traded on The Nasdaq Stock Market and the issuers of those securities.

j. To establish standards for participation in The Nasdaq Stock Market, other markets or systems operated by Nasdaq and determine in accordance with Association and Nasdaq procedures if: (i) persons seeking to participate in any of such markets and systems have met the standards established for participants; and (ii) persons participating in any of the markets or systems continue to meet the standards established for participants.

k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.

l. To establish the annual budget and business plan for Nasdaq.

m. To determine allocation of Nasdaq resources.

n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems

operated by the Nasdaq Stock Market with Congress, the SEC, state regulators, other self-regulatory organizations, business groups, and the public.

2. All action taken pursuant to authority delegated pursuant to 1. shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

#### B. Board of Directors

1. Composition—As of January of 1997 the Nasdaq Board of Directors ("Nasdaq Board") shall be composed of at least Eleven (11) and not more than Fifteen (15) Directors. The President of Nasdaq shall be a member of the Nasdaq Board and the remaining Members shall be equally balanced between Industry and Non-industry Directors, including at least two (2) Public Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. In the event that the Nasdaq Board shall consist of more than Twelve (12) Members, at least Three (3) shall be Public Directors. The CEO of NASD shall be an ex-officio non-voting member of the Nasdaq Board.

##### 2. Election Procedures.

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the Nasdaq Board.

b. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under I.C.4. and 5. above.

#### C. Nasdaq Board Procedures

1. Listing/Delisting Decisions—Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing and Hearing Review Committee ("Listing Committee") within 15 calendar days, or called for review by any member of the Listing Committee within 45 days, as set forth in the Code of Procedure. A decision of the Listing Committee may be called for review by any member of the Nasdaq Board not later than its meeting next following the Listing Committee's decision. A decision of the Nasdaq Board may be called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's decision but which is 15 calendar days or more following the decision of the Listing Committee or the Nasdaq Board. Any decision not appealed or called for review shall become the final action of the Association upon expiration of the

time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing Committee, Nasdaq Board or NASD to the SEC.

2. Rule Filings—Any rule change adopted by the Nasdaq Board that imposes fees or other charges on persons or entities other than NASD members or issuers or that the Nasdaq Board determines to refer to the NASD Board because in the view of the Nasdaq Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's action but which is 15 calendar days or more following the action of the Nasdaq Board. During the process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of NASDR staff before presenting any rule proposal to the Nasdaq Board.

#### *D. Supplemental Delegation Regarding the Formation of Committees*

The Nasdaq Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the Nasdaq Board in carrying out the functions and authority delegated to Nasdaq by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the Nasdaq Board.

#### 1. Specific Committees

##### a. Quality of Markets Committee ("QOMC")

(1) The QOMC shall be a committee appointed by the Nasdaq Board on issues relating to the fairness, integrity, efficiency and competitiveness of the information, order handling and execution mechanisms of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by The Nasdaq Stock Market from the perspective of investors, both individual and institutional, retail firms, market making firms, and Nasdaq-listed companies, and other participants in The Nasdaq Stock Market.

(ii) To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.

(2) The QOMC will have broad representation that is equally balanced between industry and non-industry committee members. The committee members shall include broad representation of participants in The Nasdaq Stock Market, including investors, market makers, integrated retail firms and order entry firms.

##### b. Market Operations Review Committee ("MORC")

(1) the MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in Section 70 of the Uniform Practice Code ("UPC"), in accordance with the procedures specified therein. NASDR shall receive weekly reports of all determinations made by the staff or MORC under Section 70 of the UPC for regulatory review.

(2) The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10% of its total revenues.

##### c. Firm Operations and Clearance Committee ("FOCC")

(1) The FOCC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To issue interpretations or rulings with respect to Sections 4–10, 12, 46, 67–68 and 71 of the UPC, as well as any other provision of the UPC pertaining to transactions and post execution processing.

(ii) To advise the Nasdaq Board with respect to modifications to the UPC dealing with the transactions and post execution processing.

##### d. Nasdaq Listing and Hearing Review Committee ("Listing Committee")

(1) The Listing Committee shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To advise the Nasdaq Board on the formulation or modification of initial or maintenance eligibility criteria and fees applicable to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

(ii) To exercise the functions set forth in Article IX of the Code of Procedure, in accordance with the procedures specified therein.

(2) The Listing Committee shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10% of its total revenues.

#### 2. Other Committees

With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the By-laws by resolution or resolutions adopted by a majority of the whole Nasdaq Board.

#### *E. Stockwatch*

The Stockwatch section handles the trading halt functions for The Nasdaq Stock Market and exchange-listed securities traded in the over-the-counter market (i.e., the Third Market). Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up will be referred to and conducted by NASDR, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that the NASDR may deem necessary. NASDR staff at all times will have access to all records and files of the Stockwatch function.

#### 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 IV 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*

In order to implement a reorganization of the NASD and to create two new operating subsidiaries, NASD Regulation, Inc. ("NASDR") and The Nasdaq Stock Market, Inc. ("Nasdaq"), the NASD is proposing to: (1) adopt a new rule delegating to the NASD's subsidiaries, NASDR and

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 Act; and, (2) adopt a Plan of Allocation and Delegation setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR, and Nasdaq, following the reorganization of the NASD.

The proposed Plan is organized in three principal parts, one each of the three major entities that will constitute the reorganized NASD: the parent corporation, National Association of Securities Dealers, Inc.; the regulatory subsidiary, NASD Regulation, Inc.; and the stock market operating subsidiary, The Nasdaq Stock Market, Inc.<sup>3</sup> The Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each entity.

The first part of the Plan describes the parent corporation, National Association of Securities Dealers, Inc. The 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, 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 Composition Committee; and the SEC's access to and status of officers, directors, employees, books, records and premises of the subsidiaries.

The second part of the Plan describes the regulatory subsidiary, NASD Regulation, Inc. The Plan sets forth the delegation of authority to the NASDR by the NASD; the purpose, function and authority of the NASDR; the composition of the qualifications for members of the Board of Directors from 1997 forward, including, provisions relating to election procedures; the function and composition 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 Plan describes the stock market operating subsidiary, the Nasdaq Stock Market, Inc. The 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.

In connection with establishing the composition of and qualifications for members of the Boards, Parts I.A.2.(c) and (d) of the Plan provides for an alternative definition of "Non-Industry" Governors, Directors or Committee Members. The alternative definition would include as "Non-Industry:"

persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); [and] employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of non-member entity. \* \* \*

This provision is intended to recognize that certain individuals represent primarily non-industry constituencies, even though their company has an affiliated or subsidiary member firm where the member engages in the securities business solely or primarily to assist in the non-securities activities of its affiliates. For examples, certain large industrial corporations engage in nearly continuous distributions of debt securities to enable them to do business and do so through an affiliated member firm. In addition, insurance companies and investment companies (or their sponsors) often have an affiliated member firm that engages solely or primarily in the distribution of their affiliate's securities. In these and similar instances, the NASD does not believe that employees of the member's affiliate should be categorized as "industry" Governors, Directors or Committee Members on the basis that their primary constituency is non-industry and their involvement with the

securities industry is only incidental to their non-industry responsibilities.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act<sup>4</sup> in that the terms of the Plan will provide for the organization of the Association in a manner that will permit the Association, 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 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.

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 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 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

<sup>3</sup>The Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as the Securities Dealers Risk Purchasing Group, Inc. and Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NASD not described in the Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of the Nasdaq Stock Market. In addition, the Plan does not address the NASD's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

<sup>4</sup> 15 U.S.C. § 78o-3.

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 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 the NASDR and Nasdaq in accordance 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 Plan, which is part of this proposed rule change sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the NASDR 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, will hold its first meeting on April 11, 1996. The reorganization of the NASD Board of Governors is also reflected in proposed rule changes to the NASD By-Laws submitted in a separate rule filing and which the Commission is approving on an accelerated basis. Accordingly, the Commission believes that accelerating the approval of the proposed rule change will benefit members and the public interest by permitting the NASD Board of Governors to conduct business at its meeting on April 11, 1996.

#### 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.<sup>5</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-9512 Filed 4-17-96; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of publication.

**SUMMARY:** This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

**FOR FURTHER INFORMATION CONTACT:** James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., Suite 925,

<sup>5</sup> 17 CFR 200.30-3(a)(12).

Washington, DC 20004; telephone (202) 376-6441.

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the Federal Register (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90-12/31/90 ...	56 FR 44886; 2/6/91.
1/1/91-3/31/91 .....	56 FR 20250; 5/2/91.
4/1/91-6/30/91 .....	56 FR 31984; 7/12/91.
7/1/91-9/30/91 .....	56 FR 51735; 10/15/91.
10/1/91-12/31/91 ...	57 FR 2299; 1/21/92.
1/1/92-3/31/92 .....	57 FR 12359; 4/9/92.
4/1/92-6/30/92 .....	57 FR 32825; 7/23/92.
7/1/92-9/30/92 .....	57 FR 48255; 10/22/92.
10/1/92-12/31/92 ...	58 FR 5044; 1/19/93.
1/1/93-3/31/93 .....	58 FR 21199; 4/19/93.
4/1/93-6/30/93 .....	58 FR 42120; 8/6/93.
7/1/93-9/30/93 .....	58 FR 58218; 10/29/93.
10/1/93-12/31/93 ...	59 FR 5466; 2/4/94.
1/1/94-3/31/94 .....	59 FR 22196; 4/29/94.