

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, specifically, with the requirements of Section 6(b).⁶ In particular, the Commission believes that the proposal is consistent with Sections 6(b)(3) and 6(b)(5) of the Act, respectively, in that it assures fair representation of exchange members in the selection of its directors and administration of its affairs,⁷ and is consistent with the protection of investors and the public and with the maintenance of fair and orderly markets.⁸

More specifically, the Commission finds that the Amex's proposal to permit the appointment of two member Vice-Chairmen, one from the trading floor and one from the upstairs community, serves to codify the Exchange's custom of equal representation between upstairs members and floor members and is, therefore, consistent with the fair representation requirement of Section 6(b)(3).

Regarding the creation of the Executive Vice-Chairman position, the Commission believes that this should permit the Exchange to improve the administration of its affairs, and is thus consistent with Section 6(b)(3).

With respect to increasing from two to three the maximum number of third term Governors who can be representatives of the public, the Commission believes that the proposal appropriately balances the Exchange's competing interests of needing to retain certain governors with special levels of expertise on its Board, while at the same time continuing to promote diversity of Board representation among the different categories of member firms and, more importantly, the public. The Commission notes that the Exchange will continue to have a prohibition against more than four governors serving a third term and that this should ensure continued diversity of viewpoints on the Exchange's Board, while giving the Exchange the flexibility to extend the number of terms of its

public Board members for sound business reasons.

Finally, the Commission believes that the changes to the Emergency Committee and the Executive Committee are appropriate in light of the creation of the Executive Vice-Chairman and additional Vice-Chairman positions. In this regard, the Commission believes that these changes do not substantially alter the composition of these Committees. Accordingly, the Commission believes that the proposal is consistent with the requirements of Sections 6(b)(3) and 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Amex-96-14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37282; File No. SR-NASD-96-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes in the Structure of the NASD Board of Governors

June 6, 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 May 28, 1996,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to

⁹ 15 U.S.C. § 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amends Article VI, Section 5 to clarify that, in a contested election, the term of office of a candidate certified by the National Nominating Committee for inclusion on the ballot for the election of Governors pursuant to Article VI, Section 7(c) would be identical to the term of office of a candidate nominated by the National Nominating Committee pursuant to Article VI, Section 7(c). Amendment No 1 also amends Article VI, Section 7(a) to clarify that any person elected to the Board of Governors must be nominated or certified by the National Nominating Committee. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated June 4, 1996).

solicit comments on the proposed rule change from interested persons.

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

The NASD is proposing to amend the NASD's By-Laws. The text of the proposed rule change is available at the Office of the Secretary, NASD and at the Commission.

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

Background

In 1995, the NASD Board of Governors ("Board") appointed The Select Command on Structure and Governance ("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 at its 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 ("Nasdaq"). 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.

In January 1996, the NASD created a new subsidiary, NASD Regulation, Inc. ("NASD Regulation") to provide regulation and member and constituent services, with the NASD retaining responsibility for general oversight over the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries, Nasdaq and NASD Regulations, and final policymaking authority for the association as a whole. The NASD also

⁶ 15 U.S.C. § 78f(b).

⁷ 15 U.S.C. § 78f(b)(3). Section 6(b)(3) of the Act also provides that one or more directors be representative of issuers and investors and not associated with a member of the exchange or a broker-dealer. Article II, Section 1(a)(2) of the Amex Constitution provides that at least 12 Board members must be representatives of the public. This rule proposal does not change this requirement in the Exchange Constitution.

⁸ 15 U.S.C. § 78f(b)(5).

adopted Select Committee proposals to restructure and reduce the size of the NASD Board and to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards. In Notice to Members 95-101 (December 11, 1995), members were asked to vote on By-Law changes to implement these policies. The amendments proposed in the Notice to Members would have: (1) deleted Article V of the NASD By-Laws related to Affiliated Registered Securities Associations; (2) amended Article VII of the NASD By-Laws to create a national nominating committee to nominate persons to serve on the Board of Governors and reconstitute the Board as a majority non-industry Board; and (3) amend Article X to identify the Chief Executive Officers as the most senior executive of the NASD.

Following member approval of the proposed By-Law changes, the SEC, on April 11, 1996, granted temporary approval for a period of 90 days to the amendments to Article VII Sections 4 and 6 that restructure the Board and to a new NASD rule providing for the delegation of the authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" ("Delegation Plan").² The Delegation Plan sets forth the purposes, functions and governance procedures of the three corporations working together.

In order to complete the reorganization and restructuring contemplated by Notice to Members 95-101 and by the Delegation Plan, the NASD published for member vote further amendments to the NASD By-Laws in Special Notice to Members 96-35.³ The last date for member vote is June 22, 1996. The proposed rule change filed herein, therefore, incorporates amendments approved by the membership in Notice to Members 95-101 and Special Notice to Members 96-35, that were not previously approved by the Commission in Release 34-37106.

² Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) ("Release 34-37106"); Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) ("Release 34-37107").

³ The rule language published for member vote in Special Notice to Members 96-35 treated as if adopted the rule changes published for member vote in Notice to Members 95-101 and 96-01 (January 1996). The latter Notice proposed to adopt amendments to the By-Laws to require members to file required documents electronically. These amendments will be filed shortly.

Description of Proposed Rule Change⁴

The proposed rule change would permit the NASD to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee. The NASD is proposing to amend its By-Laws to complete the reorganization proposed in Notice to Members 95-101 and to make the By-Laws consistent with the Delegation Plan approved by the Commission in Release 34-37107 by providing for the creation of a national nominating committee to identify and nominate for election industry and non-industry persons to serve on the Board and by deleting sections and language now unnecessary or inappropriate as a result of the Delegation Plan. Included in the proposed rule change is the deletion of nearly all references to the Districts and local administration, because responsibility for the local administration of regulatory affairs under the Delegation Plan has been assigned to NASD Regulation.⁵ The NASD is also proposing to amend its By-Laws to conform terms and rule citations to those used in the reorganized NASD Manual, including, for example, replacing the term "Code of Procedure" with "Procedural Rules,"⁶ and to make various miscellaneous clarifying corrections to the By-Laws. Changes to punctuation and other minor, non-substantive changes to the rule language will not be described below. Finally, all references to the NASD "Certificate of Incorporation" are being changed to the "Restated Certificate of Incorporation" to reflect that the Certificate of Incorporation has been amended to be consistent with the changes previously adopted and proposed herein to the By-Laws.⁷

Article I. Definitions

The NASD is proposing three new definitions. "Delegation Plan" is the term by which the "Plan of Allocation

⁴ Certain minor, non-substantive changes from the rule language published for member vote in Special Notice to Members 96-35 have been made to the rule language proposed herein to correct inadvertent errors and, in particular, to ensure that the language of the proposed rule change is consistent with the reorganization of the NASD Manual.

⁵ In recognition of this assignment of responsibility, the Board of Directors of NASD Regulation adopted a resolution at its May 13, 1996, meeting to appoint the Districts and District Committees as Districts and District Committees of NASD Regulation.

⁶ The new version of the NASD Manual is divided into four sections (Administrative, Corporate Organization, Rules of the Association, and SEC Rules and Regulation T) and includes an expanded key work index. See Notice to Members 96-25 (April 1996).

and Delegation of Functions by NASD to Subsidiaries" will be known.

"Corporations" and "Boards" are the terms that will refer to the NASD, its subsidiaries and their boards of directors.

In addition, the definition of "Act" is proposed to be revised to match the definition in the Delegation Plan, and the definition of "rules of the Corporation" to be consistent with the various references to rule in the reorganized NASD Manual.⁷

Finally, the definition of "bank" is proposed to be revised to expand the reference to national banks to include the citation that such banks are included in the definition that are "under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a). * * *"

Article II. Qualifications of Members and Associated Persons

Sec. 1. Persons Eligible To Become Members and Associated Persons of Members

No change.

Sec. 2. Authority of Board To Adopt Qualification Requirements

The NASD is proposing to delete the second sentence of Subsection (c), which authorizes the Board to amend its rules related to qualification requirements without recourse to the membership for vote, because the provision is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII).

Sec. 3. Ineligibility of Certain Persons for Membership or Association

The NASD is proposing to replace "Code of Procedure" in Subsection (d) with the more general term "Procedural Rules," as used in the reorganized NASD Manual.

Sec. 4. Definition of Disqualification

No change.

Article III. Membership

Sec. 1. Application for Membership

In a change made necessary by the Delegation Plan, the NASD is proposing to amend Subsection (a)(3) of this provision to extend to the Nasdaq and NASD Regulation Boards, committee members, officers, and employees protection from liability for action taken within the scope of authority, except for

⁷ The definition published for member vote in Special Notice to Members 96-35, attached as Exhibit 2 to the proposed rule change, has been modified to eliminate certain rule language that would not have been consistent with the reorganized NASD Manual.

willful malfeasance. See also Article IV, Sec. 2(a)(2) of the By-Laws. The NASD is further proposing to replace "Board of Governors" with "Corporation" in Subsection (a)(4) because it is the corporate staff that requests information and processes applications for membership.

Consistent with the reorganized NASD Manual, which moved membership application procedures to the Procedural Rules, the NASD is proposing to delete rule language in Subsection (b) providing a procedure for the processing of membership applications and to add language requiring that applications be processed in the manner set forth in the Procedural Rules.

The NASD is also proposing to delete Subsection (c), as part of the general deletion references to Districts.

Sec. 2. Similarity of Membership Names
No change.

Sec. 3. Executive Representative
No change.

Sec. 4. Membership Roll
No change.

Sec. 5. Resignation of Members

The NASD is proposing to replace "Code of Procedure" with "Procedural Rules."

Sec. 6. Retention of Jurisdiction

The NASD is proposing to replace "Code of Procedure" with "Procedural Rules."

Sec. 7. Transfer and Termination of Membership

The NASD is proposing to replace "Rules of Fair Practice" with "rules of the Corporation" in Subsection (a).

Sec. 8. Registration of Branch Offices

The NASD is proposing to amend Subsection (a) to change the cross-reference from Article VI to Article V, as current Article V is proposed to be deleted.

Sec. 9. Vote of Branch Offices

The NASD is proposing to delete this section, as part of general deletion of references to Districts.

Sec. 10. District Committees' Right to Classify Branches

The NASD is proposing to delete this section, as part of the general deletion of references to districts.

Article IV. Registered Representatives and Associated Persons

Sec. 1. Qualification Requirements

No change.

Sec. 2. Application for Registration

The NASD is proposing to amend Subsection (a)(1) to make a non-substantiative correction to replace the word "including" with "and." As in Article III, Sec. 1(a)(3), in a change made necessary by the Delegation Plan, the NASD is proposing to amend Subsection (a)(2) to extend to the Nasdaq and NASD Regulation Boards, committee members, officers, and employees protection from liability for action taken within the scope of authority, except for willful malfeasance. See also Article IV, Sec. 2(a)(2) of the By-Laws. Moreover, all references to the "Board of Governors" are proposed to be changed to "Corporation."

Sec. 3. Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification

The NASD is proposing to amend Subsection (a) to replace "Code of Procedure" with "rules of the Corporation," "Board of Governors" with "Corporation," and "Association" with "Corporation."

Sec. 4. Retention of Jurisdiction

The NASD is proposing to amend the introduction to replace "Code of Procedure" with "rules of the Corporation" and to amend the introduction and Subsection (b) to clarify that the reference to Rule 8210 is to an NASD rule

Article V. Affiliates

The NASD is proposing to delete Article V to remove an unnecessary reference to the affiliation of other Registered Securities Associations with the NASD. Such affiliations remain authorized by Section 15A of the Act.

Article VI. Dues, Assessments and Other Charges

This Article is proposed to be redesignated as Article V.

Sec. 1. Power of Board To Fix and Levy Assessments

The NASD is proposing to replace references to the "Board of Governors" with "Corporation" in the section heading and text, and to delete language that is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII) that authorizes the Board to adopt changes to any fee, due, or assessment without recourse to the membership for vote.

Sec. 2. Reports of Members

No change.

Sec. 3. Suspension or Cancellation of Membership or Registration

No change.

Sec. 4. Reinstatement of Membership or Registration

No change.

Article VII. Board of Governors

This Article is proposed to be redesignated as Article VI.

Sec. 1. Powers and Authority of Board of Governors

The NASD is proposing to replace "Rules," with the more general reference to the defined term "rules of the Corporation" in Subsections (a)(2) and (3).

In conjunction with the implementation of the Delegation Plan, the NASD is proposing to add a new Subsection (c) that sets forth the authority of the Corporation to delegate functions, provided that such delegations are not inconsistent with the Delegation Plan.

Sec. 2. Authority To Suspend for Failure to Submit Required Information

The NASD is proposing to change numerous references to the "President" in this Subsection (b) and in other By-Law sections to "Chief Executive Officer" to make clear that the person referenced is the most senior executive of the Association.

Sec. 3. Authority To Take Action Under Emergency or Extraordinary Market Conditions

The NASD is proposing to eliminate the special committee established by Section 3 that has authority to take action in case of emergencies or extraordinary market conditions when the full Board is not available. Instead, the NASD is proposing that either the full Board, or any person or persons designated by the Board, have authority to take action under emergency conditions.

Sec. 4. Composition and Qualifications of the Board

The amendments approved by the Commission in Release No. 34-37106 reorganized Section 4 to Article VII into one provision that reconstituted the NASD Board of Governors as a smaller, majority Non-industry Board, comprising the Chief Executive Officer, one or more Non-Industry Governors representative of issuers and investors and not associated with an NASD member, and one or more Industry Governors. This change reduced the minimum size of the Board from 25 to 5. The rule change also adopted

definitions of Industry and Non-Industry Governors.

The NASD is proposing to reorganize this section into two subsections. The amendments retain in Subsection (a) the new organization of the Board as a majority Non-Industry Board but delete the definitions of Industry and Non-Industry Governor, because those terms, and a definition of Public Governor, are now contained at Section I.A. of the Delegation Plan, which definitions also apply to the Directors of Nasdaq and NASD Regulation.⁸ As revised, this section requires that the Board of Governors be composed in a manner consistent with the Delegation Plan and Section 15A(b)(4) of the Securities Exchange Act of 1934. This will ensure that the Board will at all times include full representation of issuers, investors, and the securities industry, with a Non-Industry majority. In addition, new Subsection (b) incorporates from Article X (to be redesignated Article VII), Section 1 rule language providing for the election by the Board of Governors of a Chairman and such other persons having titles as the Board may choose.

Sec. 5. Term of Office of Governors

The NASD is proposing to amend this provision to provide that, except for the Chief Executive Officer, no Governor may serve more than two consecutive three-year terms; with the limited exception that a Governor appointed to fill a term of less than one year may serve up to two consecutive terms following the expiration of that Governor's current term.

Sec. 6. Filling of Vacancies

The NASD is proposing to amend this provision to clarify that the filling of vacancies cannot be inconsistent with the Delegation Plan.

Sec. 7. Election of Board Members

Consistent with Section I.C. of the Delegation Plan, which describes the procedures for the nomination and election of NASD Governors, the NASD is proposing to amend this Section to replace all current language with new Subsections (a), (b) and (c) that provide that the members of the NASD Board of Governors shall be elected by a plurality of the votes of the members of the NASD that are present in person or represented by proxy at the annual meeting of the NASD and entitled to vote. The provision further authorizes the Board of Governors to establish a National Nominating Committee, which will

consist of six or more persons meeting qualifications to be established by the NASD Board in conformance with the Delegation Plan,⁹ to nominate or certify one or more persons for each governorship up for election. Any person nominated or certified for election to the Board is required to have demonstrated to the National Nominating Committee that that person meets the applicable qualifications for the position.

Sec. 8. Filling of Vacancies on Board

This provision is proposed to be deleted consistent with the prior approval of a new provision as Section 6 that provides a procedure for the filling of vacancies on the Board of Governors in Release 34-37106. See discussion above regarding Section 6.

Sec. 9. Meetings of Board

This section is proposed to be redesignated as Sec. 8. The title of this provision is proposed to be changed to "Meetings of the Board; Quorum; Required Vote." The NASD is proposing to clarify that a quorum of the Board shall consist of a majority of the "total number" of the Governors, rather than a majority of the "members" of the Board. The current rule language permitting meetings by mail, telephone or telegraph is proposed to be amended to permit members of the Board or any committee of the NASD to participate in a meeting by communications facilities that permit the parties to hear and speak to each other. It is further clarified that participation in a meeting constitutes the person's presence at a meeting. The current rule language is retained that no member of the Board shall vote by proxy at any meeting.

Sec. 10. Offices of Corporation

This section is proposed to be deleted as unnecessary as it restates what is true by operation of law; namely, that the NASD may maintain such offices as the Board of Governors may deem necessary.¹⁰

⁹ See Release 34-37107. The Delegation Plan provides that the National Nominating Committee shall be composed of at least 6 and not more than 9 members, equally balanced between Industry and Non-industry Committee Members (including at least 2 Public Committee Members), with 2 members of the National Nominating Committee selected by NASD, NASD Regulation, and Nasdaq, respectively. 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.

¹⁰ In Notice to Members 95-101, this provision was proposed to be deleted and replaced by new Section 9 that would provide authority to the Board for action by written consent. In Special Notice to Members 96-35, the new provision was proposed

Article VIII. District Committees and Article IX. Nominating Committees

These two articles that address the creation of District Committees and of District Nominating Committees, respectively, are proposed to be deleted, as part of the general deletion of references to Districts. As noted above, the local administration of regulatory affairs under the Delegation Plan is now the responsibility of NASD Regulation, and the NASD Regulation Board has appointed the Districts and District Committees as that corporation's mechanisms for local administration.

Article X. Officers and Employees

This Article is proposed to be redesignated as Article VII. The words "and Employees" have been deleted from the article title, because this article concerns only officers of the Corporation, not employees.

Sec. 1. Election of Officers of the Board

This provision has been relocated in Article VII (redesignated VI), Section 4(b). The current rule language specifies that the provision applies to the election by the Board of a "Chairman, one or more Vice Chairmen, and such other officers as it shall deem necessary or advisable. * * *" The proposed rule change in Section 4(b) would modify the rule language of the provision to reference only the Chairman "and such other persons having titles as it shall deem necessary or advisable. * * *"

Sec. 2. Officers of the Corporation

This Section is proposed to be redesignated as Sec. 1. The title is proposed to be deleted as redundant of the article title. This provision is proposed to be amended to specify that the powers and duties assigned to the Chief Executive Officer of the Corporation may not be inconsistent with the requirements of the Delegation Plan, and therefore deletes the Chief Executive Officer's ex-officio membership in all committees.

Sec. 3. Absence of President

This Section is proposed to be redesignated as Sec. 2. The title is proposed to be changed to "Absence of Chief Executive Officer."

Sec. 4. Employment of Counsel

This Section is proposed to be redesignated as Sec. 3.

Sec. 5. Administrative Staff

This Section is proposed to be redesignated as Sec. 4. The NASD is

to be deleted since this authority is already provided by operation of Delaware General Corporation Law.

⁸ See also Section I.C. of the Delegation Plan, which contains provisions applicable to the composition, nomination, and election of Governors. Release 34-37107.

proposing to amend this provision to clarify that determinations of the NASD Board regarding the employment of administrative staff shall not be inconsistent with the Delegation Plan.

Sec. 6. Compensation of Board and Committee Members

This Section is proposed to be redesignated as Sec. 5. The provision is proposed to be revised to delete a reference to District Committees and to reference, instead, any committee of the Corporation.

Article XI. Committees

This Article is proposed to be redesignated as Article VIII.

Sec. 1. National Committees

The NASD is proposing to delete the section subtitle of "National Committees" as unnecessary in light of the deletion of Section 2 and to amend the provision to clarify that the determination of the Board with respect to the establishment of committees shall not be inconsistent with the Delegation Plan.

Sec. 2. Committees of the Districts

This provision is proposed to be deleted, as part of the general deletion of references to Districts.

Sec. 3. Removal of Committee Member

This section is proposed to be redesignated as Sec. 2. The NASD is proposing to amend this provision to change the reference to Article XI to Article VIII, and delete references to District Committees.

Sec. 4. Executive Committee

This provision is proposed to be deleted, because the authority to create an Executive Committee exists by operation of Delaware General Corporation Law and Section 1 of this Article.

Article XII. Rules of Fair Practice

This Article is proposed to be redesignated as Article IX. The NASD is proposing to delete "Sec. 1," because there is only one section.

Article XIII. Disciplinary Proceedings

This Article is proposed to be redesignated as Article X.

Sec. 1

The NASD is proposing to delete language that is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII) that authorizes the Board of Governors to amend the Procedural Rules without the need for membership vote.

Sec. 2

No change.

Article XIV. Powers of Board To Prescribe Sanctions

This Article is proposed to be redesignated as Article XI.

Sec. 1

The NASD is proposing in Subsection (c) to change the word "Code" to "Arbitration Code" to clarify the reference to this code and in Subsection (e) to delete references to committees that are now committees of NASD Regulation.

Article XV. Uniform Practice Code

This Article is proposed to be redesignated as Article XII.

Sec. 1. Authority To Adopt Code

The NASD is proposing to delete the last sentence of the section, which is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII).

Sec. 2. Administration of Code

The NASD is proposing to replace the word "code" with "Uniform Practice Code" in the last sentence to clarify the reference.

Sec. 3. Transactions Subject to Code

The NASD is proposing to replace the word "code" with "Uniform Practice Code" in the last sentence to clarify the reference.

Article XVI. Limitation of Powers

This Article is proposed to be redesignated as Article XIII.

Sec. 1. Prohibitions

No change.

Sec. 2. Use of Name of Corporation by Members

No change.

Sec. 3. Unauthorized Expenditures

The NASD is proposing to delete the reference to District Committees and replace "President" with "Chief Executive Officer."

Sec. 4. Conflicts of Interest

The NASD is proposing to delete language which is now redundant of language of the Procedural Rules in the reorganized NASD Manual.

Sec. 5. Municipal Securities

No change.

Sec. 6. Government Securities

No change.

Article XVII. Procedure for Adopting Amendments to By-Laws

This Article is proposed to be redesignated as Article XIV. The NASD is proposing to delete "Sec. 1," because there is only one section.

Article XVIII. Corporate Seal

This Article is proposed to be redesignated as Article XV. The NASD is proposing to delete "Sec. 1," because there is only one section.

Article XIX. Checks.

This Article is proposed to be redesignated as Article XVI. The NASD is proposing to delete "Sec. 1," because there is only one section.

Article XX. Annual Financial Statement

This Article is proposed to be redesignated as Article XVII. The NASD is proposing to delete "Sec. 1," because there is only one section.

Requested Effective Date

The NASD is requesting that the proposed rule change be effective no later than July 11, 1996, as the 90-day temporary approval granted by the SEC to the proposed restructuring of the NASD Board and to the Delegation Plan expires on July 10, 1996.

The NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(2), (4), and (6) of the Act¹¹ in that the restructured organization will: (1) 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; (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.

¹¹ 15 U.S.C. § 78o-3.

(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. However, in connection with the publication of certain parts of the proposed rule change for member vote in Notice to Members 95-101, attached as Exhibit 2 to rule filing SR-NASD-96-02, the NASD receive three comments, which were attached as Exhibit 4 to SR-NASD-96-02. The NASD's statement on the comments received with respect to Notice to Members 95-101 is set forth in rule filing SR-NASD-96-02 and was published by the Commission in Release 34-37106.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-14905 Filed 6-11-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37279; File No. SR-PHLX-96-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to Listing Standards

June 5, 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 May 20, 1996, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange, pursuant to Rule 19b-4 of the Act, proposes to revise PHLX Rule 804(2) in order to correct a drafting error, which occurred when the rule was originally adopted.¹ The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Alternative Criteria for Listing-Tier I

PHLX Rule 804 No change.

(1) No change.

(2) *At least 1,000,000 shares publicly held with at least [800 public shareholders if the issuer has between 500,000 and 1 million shares publicly held, or at least] 400 public shareholders [if the issuer has either (i) over 1 million shares publicly held or (ii) over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for a six month period preceding the date of application].*

(3)-(7) No change.

¹ See Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994) (File No. SR-PHLX-93-31) (order approving proposed rule change establishing new listing and maintenance standards).

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In June 1994, the Exchange adopted new listing criteria for equity securities under a two tier approach.² Tier I securities are listed pursuant to Rule 803 or 804. Rule 803 is the main Tier I listing rule whereas Rule 804 sets forth alternative criteria geared toward research and development companies. Both Rule 803 and Rule 804 are based substantially upon the Memorandum of Understanding ("MOU") on the uniform model marketplace exemption that had been approved by the National Association of Securities Dealers, Inc. ("NASD") and the North American Securities Administrative Association, Inc. ("NASAA").³ Rule 804 was supposed to mirror Alternative 2 of the MOU listing criteria, however, when it was drafted, subsection (2), which sets forth the public float and public shareholder requirements, incorrectly incorporated some of the language of the Alternative 1 public float/shareholder requirements. To date, the Exchange has not listed any companies pursuant to the alternative criteria in Rule 804.

The proposed revision would require issuers that seek listing pursuant to Rule 804 to show that there are at least 1,000,000 shares publicly held and at least 400 public shareholders in the security. This rule once revised would reflect the original intent of the Exchange and the MOU.⁴

² *Id.*

³ See Securities Act Release No. 6810 (Dec. 6, 1988) (publicizing the release of the MOU).

⁴ The MOU between NASAA and the NASD contained the same drafting error as the drafting error described herein. The MOU incorrectly incorporated some of the language from Tier I public float and public shareholder requirements into the Tier II requirements. In the MOU between NASAA and the Exchange on October 12, 1994, the same error occurred.