

equitable principles of trade, prevent fraudulent and manipulative acts and practices, and generally provide for the protection of investors and the public interest. Specifically, the proposed rule change is designed to reduce point-of-sale impact of non-cash sales incentives that may compromise the duty of registered representatives to match the investment needs of customers with the most appropriate investment product. The Commission believes the proposal appropriately recognizes that the interest of those giving investment advice and those seeking investment advice can diverge where non-cash compensation exists as an incentive to sell specific investment products.

Accordingly, the proposed rule change is designed to limit compensation arrangements that may threaten the mutuality and harmony of interest between firms, their representatives, and the investing public. To that end, the proposal addresses direct and perceived conflicts of interest stemming from non-cash compensation arrangements, such as contests offering lavish trips and expensive prizes and gifts for the sale of investment company and variable contract securities. Investor confidence in the operation of the securities markets is in turn bolstered as a consequence of the removal of such conflicts of interest.

The proposal facilitates, moreover, the ability of NASD members to execute compliance and supervisory responsibilities by restricting the potential for third-party non-cash incentives to undermine the supervisory control of an NASD member with respect to its associated persons. An NASD member is thus assisted in its efforts to create unbiased compensation plans that are arranged with the approval of, and administered and recorded by, the member firm. The Commission believes greater supervisory and compliance control of compensation structures of associated persons will enhance the ability of NASD members to implement policies and procedures to ensure that registered representative compensation structures align the interests of the firm, the registered representative, and the investor.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that File No. SR-NASD-97-35 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40213; File No. SR-NASD-98-36]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment 1 Thereto Relating to At-Large Industry Members of the National Adjudicatory Council

July 15, 1998.

#### I. Introduction

On May 12, 1998, the National Association of Securities Dealers, Inc., ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to amend the By-Laws of NASD Regulation, Inc. ("NASD Regulation") to permit one or more Industry members of the National Adjudicatory Council ("NAC")<sup>3</sup> to serve as at-large Industry members of the NAC. By letter dated May 19, 1998, the Association filed Amendment 1 to the proposed rule change.<sup>4</sup> The proposed rule change and Amendment 1 were published for comment in the **Federal Register** on June 11, 1998.<sup>5</sup> No comments were received. This order approves the proposal.

#### II. Description of the Proposal

Currently, the NASD Regulation By-Laws authorize the NASD Regulation Board to appoint a NAC of 12 to 14

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1994).

<sup>2</sup> 17 CFR 240.19b-4 (1997).

<sup>3</sup> The functions of the NAC include hearing appeals and conducting reviews of disciplinary proceedings, statutory disqualification proceedings, and membership proceedings; reviewing offers of settlement; reviewing exemptions granted or denied by staff; and making recommendations to the Board on policy and rule changes relating to securities business and sales practices and enforcement policies, including policies with respect to fines and other sanctions. See Article V, Section 5.1 of the NASD Regulation By-Laws.

<sup>4</sup> See Letter from T. Grant Callery, General Counsel, NASD, to Katherine England, Assistant Director, SEC, dated May 19, 1998. Several additional non-substantive textual changes were also provided by telephone call on June 2, 1998. Telephone call between Alden Adkins, General Counsel, NASD Regulation, and Mandy Cohen, Attorney, SEC.

<sup>5</sup> Securities Exchange Act Release No. 40062 (June 3, 1998), 63 FR 32033.

members, and require that the number of Non-Industry members equal or exceed the number of Industry members.<sup>6</sup> Thus, the NAC generally will consist of six or seven Industry members, depending on the size of the Board. The By-Laws also require that beginning in 1999 and thereafter, all Industry members represent a geographic region.<sup>7</sup> Industry members must be nominated by a Regional Nominating Committee and may be challenged for the nomination.<sup>8</sup> The Regional Nominating Committees then nominate their candidates to the National Nominating Committee, which makes the final determination as to the nominees who are presented to the NASD Regulation Board for appointment to the NAC.<sup>9</sup>

The proposed rule change would permit the Board to designate up to two NAC Industry members who would not be subject to the regional nominating process; instead, these members would be designated as at-large Industry members of the NAC. The number of at-large Industry members could vary from year-to-year depending on the total number of Industry seats on the NAC and the number of regions selected by the Board. For example, if the Board determined that there should be a 12- or 13-member NAC (which would include six Industry seats) and five regions, then the Board could designate one at-large Industry member. If the Board determined that there should be a 14-member NAC (which would include seven Industry seats) and five regions, then there could be two at-large Industry members. If the number of Industry seats and the number of regions were equal, then there would be no at-large Industry seats that year. Thus, given the limitation on the size of the NAC and the number of Industry seats, the proposed rule change would allow zero, one, or two at-large Industry members in any given year.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act,<sup>10</sup> which provides, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in

<sup>6</sup> Article V, Section 5.2 of the NASD Regulation By-Laws.

<sup>7</sup> *Id.*

<sup>8</sup> Article VI of the NASD Regulation By-Laws.

<sup>9</sup> Article VII, Section 9 of the NASD By-Laws; Article VI, Section 6.25 of the NASD Regulation By-Laws.

<sup>10</sup> 15 U.S.C. 78(b)(6).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

general, to protect investors and the public interest.<sup>11</sup> The Commission believes that the proposed rule change will provide NASD Regulation with greater flexibility in the nomination and appointment of Industry members to the NAC, which serves an important role in reviewing disciplinary, membership, and other matters for NASD Regulation. At the same time, NASD member involvement in nominating Industry members for the NAC will be preserved by requiring most Industry members of the NAC to represent regions.

The Commission notes that the proposed rule change is consistent with the corporate reorganization approved by the Commission in SR-NASD-97-71<sup>12</sup> in that the number of regions that may be established by the Board is not specified in the NASD Regulation By-Laws so that the Board may retain flexibility in determining the appropriate number of regions. The proposed rule change also is consistent with the regional plan approved by the Board at its meeting on May 6, 1998, which proposes a 12-member NAC and five regions for 1999. The proposed rule change thus will permit five Industry members of the NAC to be nominated by the regions for consideration by the National Nominating Committee and one at-large Industry member of the NAC who would not be subject to the regional nominating requirements in Article VI of the NASD Regulation By-Laws. All six Industry members, along with six Non-Industry members, would be nominated by the National Nominating Committee and appointed by the NASD Regulation Board.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASD-98-36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**

Secretary.

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<sup>11</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> Securities Exchange Act Release No. 39175 (Sept. 30, 1997), 62 FR 53062 (Oct. 10, 1997).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40220; File No. SR-NYSE-98-18]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Filing of Certain Material in Electronic Format by Listed Companies

July 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 9, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 NYSE. 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's rules require listed companies to file multiple copies of Commission reports and other materials with the Exchange. The Exchange is proposing to permit listed companies to comply with this obligation by filing certain material with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.

The text of the proposed rule change is available at the Office of the Secretary, the NYSE, 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 NYSE 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 NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to streamline filing requirements for listed companies by permitting them to file most Commission-required documents with the Exchange in electronic format.

The Exchange's rules required listed companies to file with it multiple copies of annual and interim reports, as well as other Commission filings, such as registration statements and prospectuses. The Commission also requires listed companies to file copies of Commission reports and registration statements with any national securities exchange on which their securities are listed. Listed companies currently file these materials with the Exchange in paper format, even if they file electronically with the Commission. Under the Commission's regulations, domestic registrants generally are required to file all material with the Commission through EDGAR.<sup>3</sup>

The proposed rule change provides that, with three exceptions, the EDGAR filing will satisfy the Exchange filing requirement.<sup>4</sup> The Exchange will have immediate and complete access to all filings in the same manner that it currently does, through its library, which is operated under contract with the Exchange by a "Level" EDGAR subscriber. In addition, the Exchange is considering additional forms of access for relevant Exchange personnel, such as through an EDGAR terminal on-site in the New Listings and Client Service offices. The relevant Exchange staff also has access to much of this information through the Commission's EDGAR site on the World Wide Web.

The three areas in which the Exchange will continue to require hard copy filing are:

- Material necessary to support a listing application. The Exchange currently accepts listing applications only in hard copy format. Thus, the Exchange will continue to require the exhibits and attachments to listing

<sup>3</sup> See Section 100 of Commission Regulation S-T.

<sup>4</sup> The Exchange will submit a request for a "no action" letter (the "No Action Letter"), on behalf of its listed companies, seeking Commission staff concurrence in the view that a company's filing of a report or other material covered by this rule change through EDGAR will satisfy the company's obligation under the Commission's rules to file the material with the Exchange. Although the proposed rule change is effective immediately upon filing, the Exchange will not implement the rule change until the Commission staff grants the No Action Letter.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.