

that participates in an approved linkage plan.

For further information, please contact Jennifer Colihan, Attorney, Division of Market Regulation at (202) 942-0735.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meetings scheduled for Wednesday, September 26, 2001, and Friday, September 28, 2001 will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and a formal order.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: September 19, 2001.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44813; File No. SR-NASD-2001-57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Conform NASD Regulation, Inc.'s By-Laws to the NASD By-Laws, and Increase the Maximum Size of the NASD Regulation Board

September 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 12, 2001, the National

Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. The Association filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(3) thereunder⁴ as being concerned solely with the administration of the self-regulatory organization, which renders the proposal effective upon filing with the Commission. 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 NASD proposes to amend the By-Laws of its subsidiary, NASD Regulation, Inc. ("NASD Regulation"). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

BY-LAWS OF NASD REGULATION, INC.

ARTICLE I

DEFINITIONS

* * * * *

(i) "Director" means a member of the Board[, excluding the Chief Executive Officer of the NASD];

* * * * *

(q) "Industry Director" or "Industry member" means a Director (excluding the President of *NASD Regulation and the Chief Executive Officer of NASD*) or a National Adjudicatory Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides

professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, Nasdaq, NASD Dispute Resolution, or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(y) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President of *NASD Regulation and the Chief Executive Officer of NASD*) or a National Adjudicatory Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

* * * * *

Number of Directors

Sec. 4.2 The Board shall consist of no fewer than five and no more than [ten]*fifteen* Directors, the exact number to be determined by resolution adopted by the stockholder of NASD Regulation from time to time. Any new Director position created as a result of an increase in the size of the Board shall be filled pursuant to Section 4.4.

Qualifications

Sec. 4.3(a) Directors need not be stockholders of NASD Regulation. Only Governors of the NASD Board shall be eligible for election to the Board. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors [plus the President]. The Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(3).

affiliate of such an issuer, and an insurance company or an affiliated NASD member. If the Board consists of 5–7 Directors, it shall include at least one Public Director. If the Board consists of eight to nine Directors, at least two Directors shall be Public Directors.[and I] If the Board consists of ten to twelve Directors, at least three Directors shall be Public Directors, and if the Board consists of thirteen to fifteen Directors, at least four shall be Public Directors. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.

* * * * *

Committees

Sec. 4.13(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of NASD Regulation between meetings of the Board, and which may authorize the seal of NASD Regulation to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The President of NASD Regulation shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members [plus the President]. An Executive Committee member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

* * * * *

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 Association 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

On May 8, 2001, the Commission approved certain amendments to the NASD By-Laws.⁵ The NASD By-Laws were amended to reclassify the NASD Chief Executive Officer and President of NASD Regulation Governor positions as neutral Governors; that is, neither Industry nor Non-Industry Governors. The reclassification of those Governor positions was consistent with the neutrality classification other self-regulatory organizations assign to their staff Board members and allow the two Industry seats the staff occupied before the reclassification to be available to Industry candidates elected by the NASD membership. The proposed conforming changes to the NASD Regulation By-Laws will similarly reclassify the NASD Chief Executive Officer and President of NASD Regulation Director positions as neutral Director positions.

Additionally, the proposed NASD Regulation By-Law amendment increasing the maximum size of the Board will allow the NASD more flexibility in determining the size of the NASD Regulation Board.

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(4) of the Act,⁶ which requires, among other things, that the Association's rules be designed to assure a fair representation of its members in the administration of its affairs. The NASD believes that the proposed rule change enhances the Association's ability to assure fair representation on the NASD Regulation Board.

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.

⁵ See Securities Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001) SR–NASD–2001–06.

⁶ 15 U.S.C. 78o–3(b)(4).

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(3) of Rule 19b–4 thereunder,⁸ because it is concerned solely with the administration of the Association. At any time within 60 days of the filing of proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 Association. All submissions should refer to file number SR–NASD–2001–57 and should be submitted by October 15, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b–4(f)(3).

⁹ 17 CFR 200.30–3(a)(12).