

public interest and promotes fair and orderly markets. In this regard, incoming orders subject to Auto-Ex, just as any other CHX order entitled to primary market protection, should receive the best execution available because a print on the primary market at the limit price triggers execution on the CHX. In addition, the Exchange's implementation of Auto-Ex should assure fair competition among exchange markets, which benefits public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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 at the Commission's Public Room. Copies of such filing will also be available for inspection and copying at the principal

office of the Exchange. All submissions should refer to File No. SR-CHX-96-27 and should be submitted by December 12, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37956; File No. SR-NASD-96-20; Amendment No. 4]

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

November 15, 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 November 12, 1996, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 4 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.¹ The Commission is

⁸ 17 CFR 200.30-3(a)(12).

¹ The NASD originally filed the rule change on May 28, 1996. On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended Article VI, Section 5 of the NASD By-Laws ("By-Laws") 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 amended Article VI, Section 7(a) of the By-Laws 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).

On July 2, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 provided the final report of the vote of the NASD membership with respect to the proposed rule change. 2,227 valid ballots were received from NASD members. 2,101 voted to approve the proposed rule change, 117 voted to disapprove the proposed rule change and 9 did not vote.

On July 10, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requested temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Gallery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 4 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

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

In 1995, the NASD Board of Governors ("Board") appointed The Select Committee 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. In September 1995, the Select Committee recommended, among other things, that the NASD establish two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market, Inc. ("Nasdaq"). The Select Committee recommended that each subsidiary have an independent Board of Directors with at least 50% public representation and that the NASD remain as parent corporation overseeing the operations of both subsidiaries. The Select Committee recommended that the NASD Board of Governors be composed of a majority of public directors.

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 Regulation, and final policymaking authority for the association as a whole. The NASD also 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.

On April 11, 1996, the Commission granted temporary approval for a period of 90 days to: (i) amendments to 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

The Commission previously published notice of the proposed rule change (Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996)) and granted accelerated approval to the proposed rule change for a period of 120 days (Securities Exchange Act Release No. 37424 (July 11, 1996); 61 FR 37515 (July 18, 1996)).

as a majority non-industry Board²; (ii) NASD Rule 130 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"); and (iii) the Delegation Plan.³ The Delegation Plan sets forth certain purposes, functions and governance procedures of the three corporations working together.

On June 11, 1996, the Commission approved the instant proposed rule change for a period of 120 days. The rule change amended the By-Laws to conform them to the Delegation Plan. The rule change provided for the creation of a national nominating committee to identify and nominate for election industry and non-industry persons to serve on the Board; deleted 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; conformed terms and rule citations to those used in the reorganized *NASD Manual* and made miscellaneous clarifying corrections to the By-Laws; and replaced all references to the NASD "Certificate of Incorporation" with references 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.⁴

The NASD hereby files this Amendment No. 4, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the amendments to the By-Laws for a period of six months.⁵ During this interval, there will be no further amendments to the By-Laws, absent Commission approval of a corresponding Rule 19b-4 filing.

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

³ Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) ("Release 34-37107").

⁴ The Commission separately approved SR-NASD-96-29, amending the Delegation Plan, for a period of 120 days. See Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996).

⁵ The NASD also filed Amendment No. 3 to SR-NASD-96-29, requesting an extension of the Commission's temporary approval of the Delegation Plan for a period of six months. The Commission is separately approving that rule change as further amended Amendment No. 3. See Securities Exchange Act Release No. 37957 (November 15, 1996).

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

1. Purpose

The purpose of this Amendment No. 4 is to ensure continued effectiveness of the amended NASD By-Laws while the Commission considers whether to grant permanent approval to the instant NASD rule filing. Amendment No. 4 is intended to ensure that the NASD continues to possess the requisite corporate authority to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee.

2. Statutory Basis

The NASD believes that the proposed rule change as further amended by Amendment No. 4 is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act⁶ 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 Associated 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.

(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 received 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

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the Federal Register to avoid any interruption of the effectiveness of the amended By-Laws. The current authorization for the Service was scheduled to expire by November 18, 1996. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the self-regulatory organization functions currently assumed by NASD Regulation and Nasdaq pending Commission action on the proposed extension.

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, 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

⁶ 15 U.S.C. § 78o-3.

available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-96-20, Amendment No. 4 and should be submitted by December 12, 1996.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act⁷ 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 NASD 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.

The NASD has requested that the Commission approve the proposed rule change on or before November 18, 1996, which is prior to the 30th day following publication of notice of the filing of the proposed rule change in the Federal Register, in order to permit the uninterrupted authorization of those corporate actions necessary to effectuate the Delegation Plan.

Pursuant to Section 19(b)(2) of the Act,⁸ the Commission finds good cause for approving the proposed rule change, as further amended by Amendment No. 4, prior to the 30th day after publication in the Federal Register. The proposed rule change will permit the NASD to continue to carry out the functions and organize itself in the manner contemplated by the Delegation Plan, which is intended to enable the NASD to meet its regulatory and business obligations. Because the Commission believes that the proposed rule change facilitates the ability of the NASD to manage its affairs in a manner that enhances its ability to carry out the purposes of the Act and enforce compliance by NASD members and their associated persons with the provisions of the Act, the Commission believes that the rule filing should be

approved without delay, for a six-month period.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR-NASD-96-20, as further amended by Amendment No. 4, be, and hereby is, approved effective through May 15, 1997.

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.

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[Release No. 34-37957; File No. SR-NASD-96-29; Amendment No. 3]

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.

November 15, 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 November 12, 1996, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment No. 3 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD.¹ The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No.

¹ The NASD originally filed the rule change on July 2, 1996. On July 8, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended the language of proposed new Subsections II.C.4 and III.C.3 of the Delegation Plan to clarify that it is proposed that the NASD Board of Governors have authority to determine to both call for review or not call for review a matter of the subsidiary Board during the 15-day period provided for consideration by the NASD Board.

On July 10, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 requests temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

The Commission previously published notice of the proposed rule change and granted accelerated approval to the proposed rule change for a period of 120 days (Securities Exchange Act Release. No. 37425 (July 11, 1996); 61 FR 37518 (July 18, 1996) ("Release 34-37425").

3 from interested persons and is simultaneously granting accelerated approval to the proposed rule change for a period of six months.

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

The NASD is proposing to extend the effectiveness of: (1) Rule 0130 to the NASD, NASD's rules delegating to the subsidiaries of the 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 NASD Board of Governors and approved by the Commission pursuant to its authority under the Act; and (2) adopt a Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

Rule 0130 and the Delegation Plan originally were filed with the Commission in SR-NASD-96-16 and were simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days.² Release 34-37107 contained the full text of Rule 0130 and the Delegation Plan with the exception of three amendments thereto. On July 11, 1996, the Commission issued a release publishing for comment the three amendments to the Delegation Plan and further approving Rule 0130 and the Delegation Plan as amended for a period of 120 days.³ Release 34-37107 and Release 34-37425 published the complete text of the rule change.

The NASD hereby files this Amendment No. 3, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Delegation Plan as amended for a period of six months.⁴ During this interval, there will be no further amendments to the Delegation Plan, absent Commission approval of a corresponding Rule 19b-4 filing.

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

³ Release 34-37425.

⁴ The NASD also filed Amendment No. 4 to SR-NASD-96-20, requesting an extension of the Commission's temporary approval of the amended NASD By-Laws for a period of six months. The Commission is separately approving that rule change as further amended by Amendment No. 4. See Securities Exchange Act Release No. 37956 (November 15, 1996).

⁷ 15 U.S.C. § 78o-3.

⁸ 15 U.S.C. § 78s(b)(2).