

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 proposed rule change is consistent with the Act.<sup>9</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 NASD. All submissions should refer to file number SR-NASD-99-56 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42036; File No. SR-NASD-99-35]

#### Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Definition of "Person Associated With a Member"

October 19, 1999.

#### I. Introduction

On August 3, 1999, the National Association of Securities Dealers, Inc.

<sup>9</sup>In reviewing the proposed rule change, the commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change to amend the definition of "person associated with a member" in the By-Laws of the NASD, NASD Regulation, Inc. ("NASD Regulation"), and The Nasdaq Stock Market, Inc. ("Nasdaq"). Notice of the proposed rule change was published in the **Federal Register** on September 10, 1999.<sup>3</sup> The commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The proposed rule change comprises two amendments to the definition of "person associated with a member" in Article I of the NASD By-Laws and conforming amendments to the NASD Regulation and Nasdaq By-Laws.<sup>4</sup> It also includes a minor textual change to the definition to clarify an ambiguity.

The first amendment expands the definition to apply to certain owners of NASD members ("members") not currently included in its scope, specifically for purposes of NASD Rule 8210, entitled "Provision of Information and Testimony and Inspection and Copying of Books."<sup>5</sup> Currently, the definition of "person associated with a member" includes only owners who are natural persons engaged in the member's investment banking or securities business and who have a direct or indirect "control" relationship with the member.<sup>6</sup> The amendment expands the definition to give the staff authority to require the provision of

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

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

<sup>3</sup> See Securities Exchange Act Release No. 41820 (September 1, 1999), 64 FR 49261.

<sup>4</sup> The By-Laws of the NASD, NASD Regulation, and Nasdaq are herein collectively referred to as "By-Laws."

<sup>5</sup> NASD Rule 8210 authorizes the staff of the NASD, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or rules, to require a member or associated person to provide information or testimony. The rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

<sup>6</sup> The By-Laws do not define the term "control." Form BD defines "control" as the "power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that \* \* \* directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or \* \* \* in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company."

information and testimony under NASD Rule 8210 from any person—including a natural person or corporate or other entity—who holds a five percent or greater interest in a member firm, regardless of whether they "control" the member firm or are actively engaged in its securities or investment banking business. Such persons are listed in Schedule A of Form BD of a member.

The second proposed provision resolves an anomaly between the current By-Law definition of the term "person associated with a member" and Form U-4, which is the application form for registration that must be signed by prospective registrants. Form U-4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he is applying for registration. However, the current definition of "associated person" in the By-Laws does not address applicants for registration. The proposed rule change makes the By-Laws consistent with Form U-4 in this respect by including in the definition a person who has applied for registration.

Finally, the word "other" is inserted into subsection 2 of the definition of "person associated with a member" to clarify that the subsection describes only natural persons.

The NASD proposes to make the rule change effective for all members within 45 days after Commission approval. The effective date will be announced at least 15 days in advance in a Notice To Members.

#### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act, and, in particular, the requirements of section 15A<sup>7</sup> of the Act applicable to a registered securities association.<sup>8</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)<sup>9</sup> of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change will promote the objectives of Section 15A(b)(6) of the Act by helping the NASD obtain necessary information to conduct its regulatory

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6)

investigations and proceedings and clarifying its jurisdiction over applicants for registration.

#### IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

*It is therefore ordered*, pursuant to Section 19(b)(2) <sup>10</sup> of the Act, that the proposed rule change (SR-NASD-99-35) is hereby approved.

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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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42033; File No. SR-NYSE-99-23]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Exchange's Branch Office Application

October 19, 1999.

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 June 8, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposal was amended on September 9, 1999,<sup>3</sup> so as to be filed as a "non-controversial" rule change under Rule 19b-4(f)(6).<sup>4</sup> 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 NYSE proposes to revise its Branch Office Application form to require more detailed information relating to the establishment of new branch offices by Exchange members and member organizations and to adopt a new Office Space Sharing form. The test 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 this proposed rule change is to submit to the Commission the following two forms: the revised Branch Office Application and the new Office Space Sharing form. The Branch Office Application is employed by Exchange members and member organizations seeking Exchange approval of a new branch office in accordance with Exchange Rule 342 ("Offices—Approval, Supervision and Control"). Exchange Rule 342(c) requires that a member or member organization obtain the Exchange's prior written consent for each office established, other than a main office. Exchange Rule 343 ("Offices—Sole Tenancy, Hours, Disply of Membership Certificates") contains criteria under which members or member organizations may share office space with the securities-related individuals and organizations. The NYSE proposes to adopt an Office Space Sharing form, which will be used by members and member organizations seeking to share office space pursuant to NYSE Rule 343.

The Exchange determined to revise its Branch Office Application so that the form will provide more meaningful and

detailed information concerning the personnel and activities of a member's or member organization's proposal branch office. Such additional information on the Application will enable the Exchange to make a better-informed decision concerning approval of the location.

Specifically, additional information required by the revised Application includes:

- (i) A description of the types of activities to be conducted and the products to be offered at the branch office;
- (ii) The estimated number of accounts to be serviced by the office;
- (iii) Whether any persons assigned to the office are subject to Statutory Disqualification or have reportable adverse disciplinary histories;
- (iv) Whether the office will have independent contractors assigned to it;
- (v) Whether the office has been acquired from another broker-dealer or financial institution;
- (vi) Where records pertaining to the office are maintained;
- (vii) whether any person other than the member organization have a financial interest in the office;
- (viii) Whether the broker-dealer and the office's registered representatives have required state registrations; and
- (ix) Submission of the social security number and Central Registration Depository ("CRD") number of each registered person to be assigned to the office.

If the office will be shared with another person or organization, an Office Space Sharing form, which addresses compliance with the Exchange's space sharing rule, NYSE Rule 343, will be completed as part of the Branch Office Application.

Generally, NYSE Rule 343 prohibits Exchange members and member organizations from sharing office space with other broker-dealers, investment advisors or any other persons who conduct a securities or commodities business with the public, without prior approval of the Exchange. However, the rule sets forth certain conditions under which Exchange members or member organizations may share office space with securities-related individuals or organizations. If each of the appropriate rule provision's enumerated conditions is met, the Exchange may permit a space-sharing arrangement. The new Office Space Sharing form will serve as an attestation by the member or member organization that the conditions required by NYSE Rule 343 have been met. Exchange approval of the branch office location will encompass, where applicable, approval of the space

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> See Letter to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated September 8, 1999 ("Amendment No. 1"). The NYSE originally filed the proposed rule change under Section 19(b)(3)(A)(iii) of the Act. 15 U.S.C. 78s(b)(3)(A)(iii). Amendment No. 1 also includes a rearranged version of the revised Branch Office Application Form. Additionally, in Amendment No. 1, the NYSE further clarifies the intent of the proposal and describes the implementation plan for the electronic filing program.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).