

May 12, 1998

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Mail Stop 10-1

Re: **SR-NASD-98-36; Amendments to NASD Regulation By-Laws Relating to At-Large Industry Members of the National Adjudicatory Council**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed is the above-numbered rule filing. I also have enclosed a 3-1/2" disk containing the rule filing in WordPerfect 5.0 to facilitate production of the Federal Register notice.

If you have any questions, please call Mary M. Dunbar, Office of the General Counsel, at 728-8252.

Very truly yours,

Joan C. Conley
Corporate Secretary

Attachment

File No. SR-NASD-98-36
Consists of 14 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), NASD Regulation, Inc. ("NASD Regulation") is filing a proposed rule change to its By-Laws authorizing at-large Industry members of the National Adjudicatory Council ("NAC"). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

BY-LAWS OF NASD REGULATION, INC.

ARTICLE V

NATIONAL ADJUDICATORY COUNCIL

Number of Members and Qualifications

Sec. 5.2 (a) The National Adjudicatory Council shall consist of no fewer than 12 and no more than 14 members. The number of Non-Industry members, including at least three Public members, shall equal or exceed the number of Industry members. In 1999 and thereafter[, the]_ (1) if the National Adjudicatory Council shall consist of 12 or 13 members, the Board may designate one Industry member as an at-large member, and the remaining Industry members shall represent a geographic region designated by the Board under Article VI, Section 6.1; or (2) if the National Adjudicatory Council shall consist of 14 members, the Board may designate one or two Industry members as at-large members, and the remaining Industry members shall represent a geographic region designated by the Board under Article VI, Section 6.1.

* * *

2. Procedures of the Self-Regulatory Organization

The NASD Regulation Board of Directors and the NASD Board of Governors approved the proposed rule change and authorized its filing at their meetings on May 6 and 7, 1998, respectively. The Nasdaq Stock Market has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. No other action by the NASD is necessary for the filing of the proposed rule change. Article XIII of the NASD Regulation By-Laws permits the NASD Regulation Board to adopt amendments to the NASD Regulation By-Laws without recourse to the NASD membership for approval.

NASD Regulation proposes to make the rule change effective upon approval by the Securities and Exchange Commission ("Commission").

Questions regarding this rule filing may be directed to Mary M. Dunbar, Office of General Counsel, at 202-728-8252.

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

a. Purpose

The purpose of the proposed rule change is to amend the NASD Regulation By-Laws to permit one or two Industry members of the National Adjudicatory Council ("NAC")¹ to serve as

¹The 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.

at-large Industry members of the NAC, rather than requiring that all Industry members represent a region as is currently provided in the NASD Regulation By-Laws. Currently, the NASD Regulation By-Laws authorize the NASD Regulation Board to appoint an NAC of 12 to 14 members, and require that the number of Non-Industry members equal or exceed the number of Industry members.² 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.³ Industry members must be nominated by a Regional Nominating Committee and may be challenged for the nomination.⁴ 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.⁵

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

²Article V, Section 5.2 of the NASD Regulation By-Laws.

³Id.

⁴Article VI of the NASD Regulation By-Laws.

⁵Article VII, Section 9 of the NASD By-Laws; Article VI, Section 6.25 of the NASD Regulation By-Laws.

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 limitations 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.

The proposed rule change would provide NASD Regulation with greater flexibility in the nomination and appointment of Industry members to the NAC. The availability of an at-large seat could assist the National Nominating Committee in recruiting a particularly strong candidate for the NAC by permitting the National Nominating Committee to nominate that candidate to an at-large seat so that the candidate would not have to go through the regional nominating process. Similarly, where a region had two strong candidates, the proposed rule change would allow the National Nominating Committee to nominate one of the candidates to an at-large seat, which in some circumstances could save the time and expense associated with a contested nomination.⁶ At the same time, NASD member involvement in nominating Industry members for the NAC would be preserved by requiring most Industry members of the NAC to represent regions. This additional flexibility would help ensure that the most highly qualified candidates are selected for the NAC.

NASD Regulation proposes to make the rule change effective upon approval from the Commission.

⁶See Article VI, Sections 6.13 to 6.26 of the NASD Regulation By-Laws.

b. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must 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 NASD believes that the proposed rule change will provide greater flexibility to the National Nominating Committee and the NASD Regulation Board in selecting the most highly qualified candidates for the National Adjudicatory Council, which serves an important role in reviewing disciplinary, membership, and other matters for NASD Regulation.

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

NASD Regulation does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. 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.

6. Extension of Time Period for Commission Action

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD Regulation has caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: _____

May 12, 1998

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-98-36)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Regulation, Inc. Relating to At-Large Industry Members of the National Adjudicatory Council

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 12, 1998, NASD Regulation, Inc. ("NASD Regulation") 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 NASD Regulation. 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

NASD Regulation proposes to amend Article V, Section 5.2 of its By-Laws relating to the composition of the National Adjudicatory Council to authorize at-large Industry members who would not be subject to the regional nomination requirement. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

BY-LAWS OF NASD REGULATION, INC.

ARTICLE V

NATIONAL ADJUDICATORY COUNCIL

Number of Members and Qualifications

Sec. 5.2 (a) The National Adjudicatory Council shall consist of no fewer than 12 and no more than 14 members. The number of Non-Industry members, including at least three Public members, shall equal or exceed the number of Industry members. In 1999 and thereafter[, the]: (1) if the National Adjudicatory Council shall consist of 12 or 13 members, the Board may designate one Industry member as an at-large member, and the remaining Industry members shall represent a geographic region designated by the Board under Article VI, Section 6.1; or (2) if the National Adjudicatory Council shall consist of 14 members, the Board may designate one or two Industry members as at-large members, and the remaining Industry members shall represent a geographic region designated by the Board under Article VI, Section 6.1.

* * *

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 amend the NASD Regulation By-Laws to permit one or two Industry members of the National Adjudicatory Council ("NAC")¹ to serve as at-large Industry members of the NAC, rather than requiring that all Industry members represent a region as is currently provided in the NASD Regulation By-Laws. Currently, the NASD Regulation By-Laws authorize the NASD Regulation Board to appoint an NAC of 12 to 14 members, and require that the number of Non-Industry members equal or exceed the number of Industry members.² Thus, the NAC generally will consist of six or seven Industry members,

¹The 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.

²Article V, Section 5.2 of the NASD Regulation By-Laws.

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.³ Industry members must be nominated by a Regional Nominating Committee and may be challenged for the nomination.⁴ 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.⁵

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 limitations on the size of the NAC and the number of Industry

³Id.

⁴Article VI of the NASD Regulation By-Laws.

⁵Article VII, Section 9 of the NASD By-Laws; Article VI, Section 6.25 of the NASD Regulation By-Laws.

seats, the proposed rule change would allow zero, one, or two at-large Industry members in any given year.

The proposed rule change would provide NASD Regulation with greater flexibility in the nomination and appointment of Industry members to the NAC. The availability of an at-large seat could assist the National Nominating Committee in recruiting a particularly strong candidate for the NAC by permitting the National Nominating Committee to nominate that candidate to an at-large seat so that the candidate would not have to go through the regional nominating process.

Similarly, where a region had two strong candidates, the proposed rule change would allow the National Nominating Committee to nominate one of the candidates to an at-large seat, which in some circumstances could save the time and expense associated with a contested nomination.⁶

At the same time, NASD member involvement in nominating Industry members for the NAC would be preserved by requiring most Industry members of the NAC to represent regions. This additional flexibility would help ensure that the most highly qualified candidates are selected for the NAC.

NASD Regulation proposes to make the rule change effective upon approval from the Commission.

⁶See Article VI, Sections 6.13 to 6.26 of the NASD Regulation By-Laws.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must 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 NASD believes that the proposed rule change will provide greater flexibility to the National Nominating Committee and the NASD Regulation Board in selecting the most highly qualified candidates for the National Adjudicatory Council, which serves an important role in reviewing disciplinary, membership, and other matters for NASD Regulation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change would 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.

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 NASD Regulation. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

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

Jonathan G. Katz
Secretary