ATTACHMENT A

Additions are underlined;
Deletions are [bracketed].

BY-LAWS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ARTICLE I

DEFINITIONS

When used in these By-Laws, [and any rules of the Corporation,] unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) "bank" means (1) a banking institution organized under the laws of the United States, (2) a member bank of the Federal Reserve System, (3) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. § 92a), and which is supervised and examined by a State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Act, and (4) a receiver, conservator, or other liquidating agent of any

institution or firm included in clauses (1), (2), or (3) of this subsection;

(c) "Board" means the Board of Governors of the [Corporation.] NASD;

[(d) "Boards" means the Board of Governors of the Corporation and the Boards of Directors of The Nasdaq Stock Market, Inc. and NASD Regulation, Inc.;]

[(e)](d) "branch office" means an office defined as a branch office in [NASD Rule 3010] the Rules of the Association;

[(f)](e) "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

[(g)](f) "Commission" means the Securities and Exchange Commission;

[(h) "Corporation" means the National Association of Securities Dealers, Inc.;]

[(i) "Corporations" means the National Association of Securities Dealers, Inc. ("NASD"), and its subsidiaries, The Nasdaq Stock Market, Inc. ("Nasdaq") and NASD Regulation, Inc. ("NASD Regulation");]

(g) "day" means calendar day;

[(j)](h) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust,

unincorporated organization, or other legal entity engaged in the business of buying and selling securities for [his] such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as [he] such person buys or sells securities for [his] such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

[(k) "delegation](i) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;

(j) "district" means a district established by the NASD Regulation Board pursuant to the NASD Regulation By-Laws;

[(l)](k) "government securities broker" shall have the same meaning as in Section 3(a)(43) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(m)](l) "government securities dealer" shall have the same meaning as in Section 3(a)(44) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(n)](m) "Governor" means a member of the Board[.];

(n) "Industry Director" means a Director of the NASD Regulation Board or Nasdaq Board (excluding the Presidents) 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 20 percent or more of the gross revenues received by the Director'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 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(o) "Industry Governor" or "Industry committee member" means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq) 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 Governor or committee member or 20 percent or more of the gross revenues received by the Governor’s or committee 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 Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

[(o)](p) "investment banking or securities business" means the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others;

[(p)](q) "member" means any broker or dealer admitted to membership in the [Corporation] NASD;

[(q)](r) "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond as defined by Section 3(a)(29) of the Act;

[(r)](s) "municipal securities broker" means a broker, except a bank or department or division of a bank, engaged in the business

of effecting transactions in municipal securities for the account of others;

[(s)](t) "municipal securities dealer" means any person, except a bank or department or division of a bank, engaged in the business of buying and selling municipal securities for [his] such person's own account, through a broker or otherwise, but does not include any person insofar as [he] such person buys or sells securities for [his] such person's own account either individually or in some fiduciary capacity, but not as a part of a regular business;

(u) "NASD" means the National Association of Securities Dealers, Inc.;

(v) "Nasdaq" means The Nasdaq Stock Market, Inc.;

(w) "Nasdaq Board" means the Board of Directors of Nasdaq;

(x) "Nasdaq Listing and Hearing Review Council" means a body appointed pursuant to Article V of the Nasdaq By-Laws;

(y) "NASD Regulation" means NASD Regulation, Inc.;

(z) "NASD Regulation Board" means the Board of Directors of NASD Regulation;

(aa) "National Adjudicatory Council" means a body appointed pursuant to Article V of the NASD Regulation By-Laws;

(bb) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of these By-Laws;

(cc) "Non-Industry Director" means a Director of the NASD

Regulation Board or Nasdaq Board (excluding the Presidents of NASD Regulation and Nasdaq) who is: (1) a Public Director; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director;

(dd) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq) or committee member who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member;

[(t)](ee) "person associated with a member" or "associated person of a member" means: (1) [every] a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of [any] a member, or [any] a natural person occupying a similar status or performing similar functions, or [any] a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by [such] a member, whether or not any such person is registered or exempt from registration with the [Corporation] NASD [pursuant to] under these By-Laws or the Rules of the Association;

(ff) "Public Director" means a Director of the NASD

Regulation Board or Nasdaq Board who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

(gg) "Public Governor" or "Public committee member" means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

[(u)](hh) "registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer" means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act; and

[(v) "rules of the Corporation" means all rules of the Corporation (which rules may be referred to as "NASD Rules"), Certificate of Incorporation, By-Laws, Rules of the Association, any other rules, and any interpretations thereunder.]

(ii) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board pursuant to these By-Laws, as hereafter amended or supplemented.

ARTICLE II

OFFICES

Location

Sec. 1. The address of the registered office of the NASD in the State of Delaware and the name of the registered agent at such

address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The NASD also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the NASD may require.

Change of Location

Sec. 2. In the manner permitted by law, the Board or the registered agent may change the address of the NASD's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

ARTICLE [II] III

QUALIFICATIONS OF MEMBERS AND ASSOCIATED PERSONS

Persons Eligible to [become] Become Members and Associated Persons of Members

Sec. 1. (a) Any registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States, under the laws of the United States, shall be eligible for membership in the [Corporation] NASD, except such registered brokers, dealers, or municipal securities brokers or dealers, or government securities brokers or dealers which are excluded under the provisions of [Sections 3(a) or (b) of this Article] Section 3.

(b) Any person shall be eligible to become an associated

person of a member, except such persons who are excluded under the provisions of Section 3[(b) of this Article].

Authority of Board to Adopt Qualification Requirements

Sec. 2. (a) The Board [of Governors] shall have authority to adopt rules and regulations applicable to applicants for membership, members, and persons associated with applicants or members establishing specified and appropriate standards with respect to the training, experience, competence, and such other qualifications as the Board [of Governors] finds necessary or desirable, and in the case of an applicant for membership or a member, standards of financial responsibility and operational capability.

(b) In establishing and applying such standards, the Board [of Governors] may classify members and persons associated with such members, taking into account relevant matters, including the nature, extent, and type of business being conducted and of securities sold, dealt in, or otherwise handled. The Board [of Governors] may specify that all or any portion of such standards shall be applicable to any such class and may require the persons in any such class to be registered with the [Corporation] NASD.

(c) The Board [of Governors] may from time to time make changes in such rules, regulations, and standards as it deems necessary or appropriate.

Ineligibility of Certain Persons for Membership or Association

Sec. 3. (a) No registered broker, dealer, municipal securities

broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member fails or ceases to satisfy the qualification requirements established under Section 2 [of this Article], if applicable, or if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member is or becomes subject to a disqualification under Section 4 [of this Article], or if such member fails to comply with the requirement that all forms filed pursuant to these By-Laws be filed via electronic process or such other process as the [Corporation] NASD may prescribe.

(b) No person shall become associated with a member, continue to be associated with a member, or transfer association to another member, if such person fails or ceases to satisfy the qualification requirements established under Section 2 [of this Article], if applicable, or if such person is or becomes subject to a disqualification under Section 4 [of this Article]; and no broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if any person associated with it is ineligible to be an associated person under this subsection.

(c) If it deems appropriate, the Board [of Governors], upon notice and opportunity for a hearing, may cancel the membership of

a member if it becomes ineligible for continuance in membership under subsection (a) [hereof], may suspend or bar a person [for] from continuing to be associated with any member if such person is or becomes ineligible for association under subsection (b) [hereof], and may cancel the membership of any member who continues to be associated with any such ineligible person.

(d) Any [broker, dealer, municipal securities dealer, or government securities broker or dealer which is ineligible for admission into membership, or any member which] member that is ineligible for continuance in membership[,] may file with the Board [of Governors] an application requesting relief from the ineligibility pursuant to [procedures adopted by the Board of Governors and contained in the Corporation's Procedural Rules. The Board of Governors] the Rules of the Association. A member may file such application on its own behalf and on behalf of a current or prospective associated person. The Board may, in its discretion, approve the [admission] continuance in membership, and may also approve the association or continuance of [an applicant or member, or the] association of any person, if the Board determines that such approval is consistent with the public interest and the protection of investors. Any approval hereunder may be granted unconditionally or on such terms and conditions as the Board considers necessary or appropriate. In the exercise of the authority granted hereunder, the Board [of Governors] may[: (1)] conduct such inquiry or investigation into the relevant facts

and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification, may include the proposed or present business of [an applicant for membership or of] a member and the conditions of association of any current or prospective associated person [prospective or presently associated person, among other matters; (2) permit, in limited types of situations, a membership or association with a member pending completion of its inquiry or investigation, and its final determination, based upon a consideration of relevant factors, and may classify situations taking into account the status of brokers, dealers, municipal securities brokers and dealers and government securities brokers and dealers as applicants or existing members and of persons as prospective or presently associated persons of members; the type of disqualification or failure to qualify; whether a member or associated person has been the subject of a previous approval and the terms and conditions thereof; and any other relevant factors; and (3) delegate any of its functions and authority under this subsection (d) to appropriate committees of the Corporation or to Corporation staff members].

(e) An application filed under subsection (d) [hereof] shall not foreclose any action which the Board [of Governors] is authorized to take under subsection (c) [hereof] until approval has been granted.

(f) Approval by the Board [of Governors] of an application made under subsection (d) shall be subject to whatever further action the Commission may take pursuant to authority granted to the Commission under the Act.

(g) The Board may delegate its authority under this Section in a manner not inconsistent with the Delegation Plan.

Definition of Disqualification

Sec. 4. A person is subject to a "disqualification" with respect to membership, or association with a member, if such person:

(a) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to Section 5 of the Commodity Exchange Act, or foreign equivalent of a contract market designated pursuant to any substantially equivalent foreign statute or regulation, or futures association registered under Section 17 of the Commodity Exchange Act or a foreign equivalent of a futures association designated pursuant to any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(b) is subject to

(1) an order of the Commission, other appropriate

regulatory agency, or foreign financial regulatory authority:

(i) denying, suspending for a period not exceeding 12 months, or revoking [his] such person's registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or limiting [his] such person's activities as a foreign person performing a function substantially equivalent to any of the above; or

(ii) barring or suspending for a period not exceeding 12 months [his] such person from being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;

(2) an order of the Commodity Futures Trading Commission denying, suspending, or revoking [his] such person's registration under the Commodity Exchange Act (7 U.S.C. § 1 et seq.); or

(3) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(c) by [his] such person's conduct while associated with a

broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in [subsections] subsection (a) or (b) of this Section;

(d) by [his] such person's conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subsection (a) or (b) of this Section;

(e) has associated with him or her any person who is known, or in the exercise of reasonable care should be known, to him or her to be a person described in [subsections] subsection (a), (b), (c), or (d) of this Section;

(f) has willfully made or caused to be made in any application for membership in a self-regulatory organization, or to become

associated with a member of a self-regulatory organization, or in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

(g)(1) has been convicted within ten years preceding the filing of any application for membership in the [Corporation] NASD, or to become associated with a member of the [Corporation] NASD, or at any time thereafter, of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which:

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function

substantially equivalent to any of the above, or any entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of Sections 152, 1341, 1342, or 1343 or Chapters 25 or 47 of Title 18, United States Code, or a violation of a substantially equivalent foreign statute;

(2) has been convicted within ten years preceding the filing of any application for membership in the [Corporation] NASD, or to become associated with a member of the [Corporation] NASD, or at any time thereafter of any other felony;

(h) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or

person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

(i) has been found by a foreign financial regulatory authority to have--

(1) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(2) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

(3) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to [his] such person's supervision.

ARTICLE [III] IV

MEMBERSHIP

Application for Membership

Sec. 1. (a) Application for membership in the [Corporation] NASD, properly signed by the applicant, shall be made to the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe, on the form to be prescribed by the [Corporation] NASD, and shall contain:

(1) an [acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions, and covenants of the Restated Certificate of Incorporation, the By-Laws] agreement to comply with the federal securities

laws, the rules and regulations [of the Corporation as they are or may from time to time be adopted, changed or amended,] thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and Nasdaq, the Rules of the Association, and all rulings, orders, directions, and decisions [of,] issued and sanctions imposed [by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act] under the Rules of the Association;

(2) an agreement to pay such dues, assessments, and other charges in the manner and amount as [shall from time to time be fixed by the Board of Governors pursuant to these By-Laws] from time to time shall be fixed pursuant to the NASD By-Laws, Schedules to the NASD By-Laws, and the Rules of the Association; and

[(3) an agreement that none of the Corporations, or any officer, employee, or member of the Board or committees of the Corporations, shall be liable, except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer or member

of the Boards or of any committee, in his official capacity, or by any employee of the Corporations while acting within the scope of his employment or under instruction of any officer, Board, or committee of the Corporations, in connection with the administration or enforcement of any of the provisions of the rules of the Corporation as they are or may from time to time be adopted, or amended, any ruling, order, directive, decision of, or penalty imposed by, the Boards or any duly authorized committee thereof, or the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board and the Treasury Department; and]

[(4)] (3) such other reasonable information with respect to the applicant as the [Corporation] NASD may require.

(b) Any application for membership received by the [Corporation] NASD shall be processed in the manner set forth in the [Procedural] Rules of the [Corporation] Association.

(c) Each applicant and member shall ensure that its membership application with the [Corporation] NASD is kept current at all times by supplementary amendments via electronic process or such other process as the [Corporation] NASD may prescribe to the original application. Such amendments to the application shall be filed with the [Corporation] NASD not later than [thirty (30) calendar] 30 days after learning of the facts or circumstances giving rise to the amendment.

Similarity of Membership Names

Sec. 2. (a) No person or firm shall be admitted to or continued in membership in the [Corporation] NASD having a name [which] that is identical to the name of another member appearing on the membership roll of the [Corporation] NASD or a name so similar to any such name as to tend to confuse or mislead.

(b) No member may change its name without prior approval of the [Corporation] NASD.

Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the [Corporation] NASD one "executive representative" who shall represent, vote, and act for the member in all the affairs of the [Corporation] NASD, except that other executives of a member may also hold office in the [Corporation] NASD, serve on the Board [of Governors] or committees [of the Corporation] appointed under Article IX, Section 1 or otherwise take part in the affairs of the [Corporation] NASD. A member may change its executive representative upon giving notice thereof via electronic process or such other process as the [Corporation] NASD may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member.

Membership Roll

Sec. 4. The Secretary of the [Corporation] NASD shall keep a currently accurate and complete membership roll, containing the name and address of each member, and the name and address of the executive representative of each member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of the [Corporation] NASD shall at all times be available to all members of the [Corporation] NASD, to all governmental authorities, and to the general public.

Resignation of Members

Sec. 5. Membership in the [Association] NASD may be voluntarily terminated only by formal resignation. Resignations of members must be filed via electronic process or such other process as the [Corporation] NASD may prescribe and addressed to the [Corporation] NASD. Any member may resign from the [Corporation] NASD at any time. Such resignation shall not take effect until [thirty (30) calendar] 30 days after receipt thereof by the [Corporation] NASD and until all indebtedness due the [Corporation] NASD from such member shall have been paid in full and so long as any complaint or action is pending against the member under the [Procedural] Rules of the Association. The [Corporation] NASD, however, may in its discretion declare a resignation effective at any time.

Retention of Jurisdiction

Sec. 6. A resigned member or a member that has had its

membership canceled or revoked shall continue to be subject to the filing of a complaint under the [Procedural] Rules of the Association based upon conduct which commenced prior to the effective date of the member's resignation from the [Corporation] NASD or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two [(2)] years after the effective date of resignation, cancellation, or revocation.

Transfer and Termination of Membership

Sec. 7. (a) Except as provided hereinafter, no member of the [Corporation] NASD may transfer its membership or any right arising therefrom and the membership of a corporation, partnership, or any other business organization which is a member of the [Corporation] NASD shall terminate upon its liquidation, dissolution, or winding up, and the membership of a sole proprietor which is a member shall terminate at death, provided that all obligations of membership under the By-Laws and the [other rules] Rules of the [Corporation] Association have been fulfilled.

(b) The consolidation, reorganization, merger, change of name, or similar change in any corporate member shall not terminate the membership of such corporate member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the corporate member, and the member or the surviving organization shall continue in the investment banking and securities business, and shall possess the qualifications for membership in the [Corporation] NASD. The death, change of name,

withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member shall not terminate the membership of such partnership member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the partnership member, and the member or surviving organization shall continue in the investment banking and securities business and shall possess the qualifications for membership in the [Corporation] NASD. If the business of any predecessor member is to be carried on by an organization deemed to be a successor organization by the [Corporation] NASD, the membership of such predecessor member shall be extended to the successor organization subject to the notice and application requirements of the Rules of the Association and the right of the NASD to place restrictions on the successor organization pursuant to the Rules of the Association; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of [the] these By-Laws and the Rules of the Association.

Registration of Branch Offices

Sec. 8. (a) Each branch office of a member of the [Corporation] NASD shall be registered with and listed upon the membership roll of the [Corporation] NASD, and shall pay such dues, assessments, and other charges as shall be fixed from time to time by the Board [of Governors] pursuant to Article [V of the By-Laws] VI.

(b) Each member of the [Corporation] NASD shall promptly advise the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member not later than [thirty (30) calendar] 30 days after the effective date of such change.

ARTICLE [IV] V

REGISTERED REPRESENTATIVES AND ASSOCIATED PERSONS

Qualification Requirements

Sec. 1. No member shall permit any person associated with [such] the member to engage in the investment banking or securities business unless the member determines that such person [has complied with the applicable provisions under Article II of the By-Laws] satisfies the qualification requirements established under Article III, Section 2 and is not subject to a disqualification under Article III, Section 4.

Application for Registration

Sec. 2. (a) Application by any person for registration with the [Corporation] NASD, properly signed by the applicant, shall be made to the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe, on the form to be prescribed by the [Corporation] NASD and shall contain:

(1) [an acceptance of and] an agreement to comply with the [all the provisions of the rules of the Corporation as

they are or may from time to time be adopted or amended,] federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and Nasdaq, the Rules of the Association, and all rulings, orders, directions, and decisions [of, and penalties imposed by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;] issued and sanctions imposed under the Rules of the Association; and

[(2) an agreement that none of the Corporations, or any officer, employee, or member of the Boards or committees of the Corporation, shall be liable except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer, member of the Boards or of any committee in his official capacity, or by any employee of the Corporation while acting within the scope of his employment, or under instruction of any officer, Board, or committee of the Corporations, in connection with the administration or enforcement of any of the provisions of the By-Laws, any rules

of the Corporation as they are or may from time to time be adopted or amended, any ruling, order, direction, decision of, or penalty imposed by the Boards or any duly authorized committee thereof, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder including the rules of the Municipal Securities Rulemaking Board and the rules of the Treasury Department; and]

[(3)] (2) such other reasonable information with respect to the applicant as the [Corporation] NASD may require.

(b) The [Corporation] NASD shall not approve an application for registration of any person who is not eligible to be an associated person of a member under the provisions of Article III, Section 3[(b) of Article II of these By-Laws].

(c) Every application for registration filed with the [Corporation] NASD shall be kept current at all times by supplementary amendments via electronic process or such other process as the [Corporation] NASD may prescribe to the original application. Such amendment to the application shall be filed with the [Corporation] NASD not later than [thirty (30) calendar] 30 days [of] after learning of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than ten [(10) calendar] days after such disqualification occurs.

Notification by Member to [Corporation] the NASD and Associated Person of Termination;

Amendments to Notification

Sec. 3. (a) Following the termination of the association with a member of a person who is registered with it, such member shall, not later than [thirty (30) calendar] 30 days after such termination, give notice of the termination of such association to the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe on a form designated by the [Corporation] NASD, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the [Corporation] NASD. A member [which] that does not submit such notification[,] and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed a late filing fee as specified by the [Corporation] NASD. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action under the [rules] Rules of the [Corporation] Association is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually under the [rules] Rules of the [Corporation. The Corporation] Association. The NASD, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the [Corporation] NASD via

electronic process or such other process as the [Corporation] NASD may prescribe by means of an amendment to the notice filed pursuant to subsection [paragraph] (a) [above] in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the [Corporation] NASD via electronic process or such other process as the [Corporation] NASD may prescribe and a copy provided to the person whose association with the member has been terminated not later than [thirty (30) calendar] 30 days after the member learns of the facts or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the [Corporation] NASD or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the [rules] Rules of the [Corporation] Association based upon conduct which commenced prior to the termination [or], revocation, or cancellation or upon such person's failure, while subject to the [Corporation's] NASD's jurisdiction as provided herein, to provide information requested by the [Corporation] NASD pursuant to [NASD Rule 8210] the Rules of the Association, but any such complaint shall be filed within:

(a) two [(2)] years after the effective date of termination of registration pursuant to Section 3 [above],

provided, however that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this [paragraph] subsection;

(b) two [(2)] years after the effective date of revocation or cancellation of registration pursuant to [NASD Rule 8320] the Rules of the Association; or

(c) in the case of an unregistered person, within two [(2)] years after the date upon which such person ceased to be associated with the member.

ARTICLE [V] VI

DUES, ASSESSMENTS, AND OTHER CHARGES

Power of [Corporation] the NASD to Fix and Levy Assessments

Sec. 1. The [Corporation] NASD shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the [Corporation] NASD each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by members of the [Corporation] NASD and issuers and any other persons using any facility or system which the [Corporation] NASD, NASD Regulation, or Nasdaq operates or controls. Fees, dues, assessments, and other charges shall be called and payable as

determined by the [Corporation] NASD from time to time; provided, however, that such admission fees, dues, assessments, and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the [Corporation] NASD operates or controls. The [Corporation] NASD may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the [Corporation] NASD may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Reports of Members

Sec. 2. Each member, issuer, or other person shall promptly furnish all information or reports requested by the [Corporation] NASD in connection with the determination of the amount of admission fees, dues, assessments, or other charges.

Suspension or Cancellation of Membership or Registration

Sec. 3. The [Corporation] NASD after [fifteen (15)] 15 days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments, or other charges or for failure to

furnish any information or reports requested pursuant to Section 2 [of this Article], or for failure to comply with an award of arbitrators properly rendered pursuant to [Section 41] the Rules of the [Code of Arbitration Procedure] Association, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the [procedures specified by the Corporation] Rules of the Association.

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the [Corporation] NASD upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the [Corporation] NASD.

Delegation

Sec. 5. The NASD may delegate its authority under this Article in a manner not inconsistent with the Delegation Plan.

ARTICLE [VI] VII

BOARD OF GOVERNORS

Powers and Authority of Board

Sec. 1. (a) The Board [of Governors] shall be the governing body of the [Corporation] NASD and, except as otherwise provided by

applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the [Corporation] NASD and the promotion of the [Corporation's] NASD's welfare, objects, and purposes. In the exercise of such powers, the Board [of Governors] shall have the authority to:

[(1)](i) adopt for submission to the membership, as hereinafter provided, such By-Laws and changes or additions thereto as it deems necessary or appropriate;

[(2)](ii) adopt such other [rules] Rules of the [Corporation] Association and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change, or addition to such [rules] Rules;

[(3)](iii) make such regulations, issue such orders, resolutions, exemptions, interpretations, including interpretations of these By-Laws and the [rules] Rules of the [Corporation] Association, and directions, and make such decisions as it deems necessary or appropriate;

[(4)](iv) prescribe [a code of arbitration procedure providing] rules for the required or voluntary arbitration of controversies between members and between members and customers or others as it shall deem necessary or appropriate;

[(5)](v) establish rules and procedures to be followed by members in connection with the distribution of securities

issued by members and affiliates thereof;

[(6)](vi) require all over-the-counter transactions in securities between members, other than transactions in exempted securities as defined in Section 3(a)(12) of the Act, to be cleared and settled through the facilities of a clearing agency registered with the Commission pursuant to the Act, which clears and settles such over-the-counter transactions in securities;

[(7)](vii) organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the [Corporation] NASD or by one or more independent firms under contract with the [Corporation] NASD as the Board [of Governors] may deem necessary or appropriate. The Board [of Governors] may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others;

[(8)](viii) require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered

by the [Corporation] NASD, a division or subsidiary thereof, or a clearing agency registered under the Act; and

[(9)](ix) engage in any activities or conduct necessary or appropriate to carry out the [Corporation's] NASD's purposes under its Restated Certificate of Incorporation and the federal securities laws.

(b) In the event of the refusal, failure, neglect, or inability of any [member of the Board of Governors] Governor to discharge [his] such Governor's duties, or for any cause affecting the best interests of the [Corporation] NASD the sufficiency of which the Board [of Governors] shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such [member] Governor and declare [his] such Governor's position vacant and that such position shall be filled in accordance with the provisions of Section [6] 7 [of this Article].

(c) To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation [and applicable law, the Corporation], and these By-Laws, the NASD may delegate any power of the [Corporation or the Board of Governors to any person or entity, including a subsidiary of the Corporation; provided that such delegation is] NASD or the Board to a committee appointed pursuant to Article IX, Section 1, the NASD Regulation Board, the Nasdaq Board, or NASD staff in a manner not inconsistent with the Delegation Plan.

Authority to Cancel or Suspend for Failure to Submit Required Information

Sec. 2. (a) The Board [of Governors] shall have authority, upon notice and opportunity for a hearing, to cancel or suspend the membership of any member or suspend the association of any person associated with a member for failure to file, or to submit on request, any report, document, or other information required to be filed with or requested by the [Corporation] NASD pursuant to these By-Laws or the Rules of the Association.

(b) Any membership or association suspended or canceled pursuant to this Section may be reinstated by the NASD pursuant to the Rules of the Association.

[(b)](c) The Board [of Governors] is authorized to delegate [the authority hereinabove granted to the Chief Executive Officer of the Corporation; provided, however, that the Executive Committee of the Board of Governors shall be notified in writing of any such contemplated action by the Chief Executive Officer] its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the Association.

Authority to Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. The Board [of Governors], or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding[;]:

[(1)](a) the trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the [Corporations] NASD, NASD Regulation, or Nasdaq, and the participation in any such system of any or all persons or the trading therein of any or all securities; and

[(2)](b) the operation of any or all member firms' offices or systems, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

Composition and Qualifications of the Board

Sec. 4. (a) [The Board of Governors shall be composed of five or more members, the number thereof to be determined from time to time by the Board of Governors, and shall include at all times the Chief Executive Officer and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Governors, both of which determinations shall be consistent with the Delegation Plan and Section 15A(b)(4) of the Act. The criteria for the categories of Industry, Non-Industry and Public Governors, as used herein, shall be established by the Board of Governors from time to time, which criteria shall be consistent with the Delegation Plan.] The Board shall consist of the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents

of NASD Regulation and Nasdaq, the Chair of the National Adjudicatory Council, and no fewer than 16 and no more than 22 Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, and a Nasdaq issuer. A majority of the Governors shall be Non-Industry Governors. If the Board consists of 21 to 23 Governors, at least five shall be Public Governors. If the Board consists of 24 to 27 Governors, at least six shall be Public Governors.

(b) As soon as practicable[,] following the annual election [of members to the Board] of Governors, the Board [of Governors] shall elect from [the] among its members [of the Board of Governors a Chairman,] a Chair and such other persons having such titles as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. The Chair of the National Adjudicatory Council may not serve as Chair of the Board. The Chair and other persons [so] elected under this subsection shall have such powers and duties as may be determined from time to time by the Board [of Governors]. The Board [of Governors, by affirmative vote of], by resolution adopted by a majority of [its members] the Governors then in office, may remove the Chair and any [such] person elected under this subsection from such position at any time.

Term of Office of Governors

Sec. 5. [Each Governor, except as otherwise provided by the Restated Certificate of Incorporation or these By-Laws, shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until his successor is elected and qualified, or until his death, resignation, disqualification, or removal. Except for the Chief Executive Officer, no Governor may serve more than two consecutive terms, provided, however, that if a Governor is appointed to fill a term of less than one year, such Governor may serve up to two consecutive terms following the expiration of such Governor's current term. The Chief Executive Officer of the Corporation shall serve as a member of the Board until his successor is selected and qualified, or until his death, resignation, disqualification, or removal.]

(a) The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq shall serve as Governors until a successor is elected, or until death, resignation, or removal.

(b) The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In

such case, the Chair of the National Adjudicatory Council may serve an initial term as a Governor and up to two consecutive terms as a Governor following the expiration of the initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD.

(c) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.

Disqualification

Sec. 6. Notwithstanding Section 5, the term of office of a Governor shall terminate immediately upon a determination by the

Board, by a majority vote of the remaining Governors, that: (a) the Governor no longer satisfies the classification (Industry, Non-Industry, or Public Governor) for which the Governor was elected; and (b) the Governor's continued service as such would violate the compositional requirements of the Board set forth in Section 4. If the term of office of a Governor terminates under this Section, and the remaining term of office of such Governor at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

Filling of Vacancies

Sec. [6.] 7. [(a) Any vacancy in the office of] If a Governor position becomes vacant, whether [occurring by reason] because of death, disability, disqualification, removal, or resignation, [other than a vacancy by reason of an increase in the size of the Board, shall be filled] the National Nominating Committee shall nominate, and the Board shall elect by majority vote of the remaining Governors then in office [and any person elected to fill such vacancy shall satisfy the qualifications and criteria], a person satisfying the classification (Industry, Non-Industry, or Public Governor) for the governorship [being filled] as provided in Section 4 [of this Article.] to fill such vacancy, except that if the remaining term of office for the vacant Governor position is not more than six months, no replacement shall be required. If the remaining term of office for the vacant Governor position is more

than one year, the Governor elected by the Board to fill such position shall stand for election in the next annual election pursuant to this Article.

[(b) Any vacancy in the office of a Governor occurring by reason of an increase in the size of the Board shall be filled by majority vote of the Board and any person elected to fill such vacancy shall satisfy the criteria for such newly created governorship as shall be established by resolution of the Board, provided that the filling of any such vacancy shall not be inconsistent with any other provisions of these By-Laws or the Delegation Plan.]

Meetings of Board; Quorum; Required Vote

Sec. 8. Meetings of the Board shall be held at such times and places, upon such notice, and in accordance with such procedure as the Board [of Governors] in its discretion may determine. [A] At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum [of the Board of Governors] for the transaction of business shall consist of a majority of the [total number of Governors of the Corporation and any] Board, including not less than 50 percent of the Non-Industry Governors. Any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in the Restated Certificate of Incorporation or these By-Laws, shall constitute the action of the Board [of Governors]. [Members of the Board of] Governors[,] or members of any committee appointed by the Board [of Governors or any other committee of the Corporation,] under Article

IX, Section 1 may participate in a meeting [thereof] of the Board or a committee by means of communications facilities that ensure all persons participating in the meeting can hear and speak to [each other] one another, and participation in a meeting pursuant to this By-Law shall constitute presence in person at such meeting. No [member of the Board of Governors] Governor shall vote by proxy at any meeting of the Board.

The National Nominating Committee

Sec. [**7.** (b)] **9.** (a) The National Nominating Committee shall [have such powers and shall perform such functions as shall be determined by resolution of the Board of Governors from time to time, consistent with the Delegation Plan] nominate: Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board for election by the membership; Industry, Non-Industry, and Public Directors for each vacant or new position on the NASD Regulation Board and the Nasdaq Board for election by the Board; Industry, Non-Industry, and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board; and Industry and Non-Industry members for each vacant or new position on the Nasdaq Listing and Hearing Review Council for appointment by the Nasdaq Board.

(b) The National Nominating Committee shall consist of [six or more persons who shall have such qualifications, and who shall be selected in such manner, as shall be determined by resolution of

the Board of Governors from time to time, which qualifications and manner of selection shall be consistent with the Delegation Plan] no fewer than six and no more than nine members. The number of Industry committee members shall equal or exceed the number of Non-Industry committee members. If the National Nominating Committee consists of six members, at least two shall be Public committee members. If the National Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members shall be current members of the NASD Board.

(c) A National Nominating Committee member may not simultaneously serve on the National Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the National Nominating Committee.

(d) Members of the National Nominating Committee shall be appointed annually by the Board and may be removed only by majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member’s duties. The NASD Regulation Board and the Nasdaq Board each shall propose two candidates to the NASD Board for appointment to the National

Nominating Committee.

(e) The Secretary of the NASD shall collect from each nominee for Governor such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Governor, and the Secretary shall certify to the National Nominating Committee each nominee's classification.

(f) At all meetings of the National Nominating Committee, a quorum for the transaction of business shall consist of a majority of the National Nominating 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.

Procedure for Nomination of Governors

Sec. [**7.**(c)] **10.** [At least 90 days prior] Prior to a meeting of members pursuant to Article XXI for the election of Governors, the [Corporation] NASD shall notify the members of the [date, place, and time of such meeting and shall set forth in such notice the] names of each nominee [(a "Nominee"), as] selected by the National Nominating Committee[,] for each governorship up for election, [and shall further provide in such notice the qualifications] the classification of governorship (Industry, Non-Industry, or Public Governor) for which the nominee is nominated, the qualifications of each nominee, and such other information regarding each [such Nominee] nominee as the National Nominating

Committee deems pertinent. A person who has not been so nominated may be included on the ballot for the election of Governors if: [(1)](a) [at least 60] within 30 days [prior to the scheduled date for the meeting of members] after the date of such notice in 1997, or within 45 days after the date of such notice in 1998 and thereafter, such person [complies with the requirements and procedures for nomination set forth in the Delegation Plan and (2) the person is certified] presents to the Secretary of the NASD petitions in support of his or her nomination duly executed by three percent of the members; and (b) the Secretary certifies that (i) the petitions are duly executed by the Executive Representatives of the requisite number of members; and (ii) the person satisfies the classification (Industry, Non-Industry, or Public Governor) of the governorship to be filled, based on such information provided by the person as is reasonably necessary to make the certification. The Secretary shall not unreasonably withhold or delay the certification. Upon certification, the election shall be deemed a contested election. After the certification of a contested election or the expiration of time for contesting an election under this Section, the Secretary shall deliver notice of a meeting of members pursuant to Article XXI, Section 3(a).

Communication of Views

Sec. 11. The NASD, the Board, the National Nominating Committee, a committee appointed pursuant to Article IX, Section 1,

and NASD staff shall not take any position publicly or with a member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the NASD Regulation By-Laws. A Governor or a member of the National Nominating Committee or any other committee may communicate his or her views with respect to any candidate if such Governor or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of the NASD, the NASD Board, the National Nominating Committee, or any other committee. Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to a member or person associated with or employed by a member.

Administrative Support

Sec. 12. The Secretary of the NASD shall provide administrative support to the candidates in a contested election under this Article by sending to NASD members eligible to vote up to two mailings of materials prepared by the candidates. The NASD shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinions of the candidate. The candidate shall provide a copy of such material for each member of the NASD. A candidate nominated by the National Nominating Committee may identify himself or herself as such in his or her materials. Any

candidate may send additional materials to NASD members at the candidate's own expense. Except as provided in this Article, the NASD, the Board, any committee, and NASD staff shall not provide any other administrative support to a candidate in a contested election conducted under this Article or a contested election or nomination conducted under the NASD Regulation By-Laws.

Election of [Board Members] Governors

Sec. [**7.**(a)] **13.** [The members of the Board of] Governors shall be elected by a plurality of the votes of the members of the [Corporation] NASD present in person or represented by proxy at the annual meeting of the [Corporation] NASD and entitled to vote thereat. The annual meeting of the [Corporation] NASD shall be on such date and at such place as the Board [of Governors] shall designate pursuant to Article XXI. Any Governor so elected must be nominated by the National Nominating Committee or certified by the Secretary [described in subsection (b) below or certified] pursuant to [subsection (c) below and must satisfy the other qualifications for Governors set forth in Section 4 of this Article or as established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the Delegation Plan] Section 10.

Maintenance of Compositional Requirements of the Board

Sec. 14. Each Governor shall update the information submitted under Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and

upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.

Resignation

Sec. 15. Any Governor may resign at any time either upon written notice of resignation to the Chair of the Board, the Chief Executive Officer, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

ARTICLE [VII] VIII

OFFICERS, AGENTS, AND EMPLOYEES

Officers

Sec. 1. The Board [of Governors] shall [select] elect a Chief Executive Officer, who shall be responsible for the management and administration of its affairs and shall be the official representative of the [Corporation] NASD in all public matters and who shall have such powers and duties in the management of the [Corporation] NASD as may be prescribed in a resolution by the Board [of Governors], and which powers and duties shall not be inconsistent with the Delegation Plan. The Board shall elect a Chief Operating Officer and Secretary, who shall have such powers and duties conferred by these By-Laws and such other powers and duties as may be prescribed in a resolution by the Board. The Board may provide for such other executive or administrative

officers as it shall deem necessary or advisable, including, but not limited to, Executive Vice [-]President, Senior Vice [-]President, Vice [-]President, [Secretary,] and Treasurer of the [Corporation] NASD. All such officers shall have such titles, [such] powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board [of Governors]. Each such officer shall hold office until [his] a successor is elected and qualified or until [his] such officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the [Corporation] NASD. [The Board of Governors may remove any officer, with or without cause, at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by death, resignation, removal, or otherwise may be filled for the unexpired portion of the term by the Board of Governors at any meeting.]

Absence of Chief Executive Officer

Sec. 2. In the case of the absence or inability to act of the [President] Chief Executive Officer of the [Corporation] NASD, or in the case of a vacancy in such office, the Board [of Governors] may appoint its [Chairman] Chair or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the [President] Chief Executive Officer.

Agents and Employees

Sec. 3. The Board may employ or authorize the employment and prescribe the powers and duties of such agents and employees as it deems necessary or advisable. The employment and compensation of such agents and employees shall be at the pleasure of the Board, provided that such determinations are not inconsistent with the requirements of the Delegation Plan. Except as provided in Article IX, Section 5(d), agents and employees of the NASD shall be under the supervision and control of the officers of the NASD, unless the Board provides by resolution that an agent or employee shall be under the supervision and control of the Board.

Employment of Counsel

Sec. [3.] 4. The Board [of Governors] may retain or authorize the employment of counsel, with such powers, titles, duties, and authority as it shall deem necessary or advisable.

[**Administrative Staff**

Sec. 4. The Board of Governors may employ or authorize the employment and prescribe the powers and duties of such an administrative staff as it deems necessary or advisable. The employment and compensation of such administrative staff of the Corporation shall be at the pleasure of the Board of Governors, provided that such determinations are not inconsistent with the requirements of the Delegation Plan.]

Delegation of Duties of Officers

Sec. 5. The Board may delegate the duties and powers of any

officer of the NASD to any other officer or to any Governor for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

Sec. 6. (a) Any officer may resign at any time upon written notice of resignation to the Board, the Chief Executive Officer, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of the NASD may be removed, with or without cause, by resolution adopted by a majority of the Governors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Governors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the NASD.

Bond

Sec. 7. The NASD may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

ARTICLE [VIII] IX

COMMITTEES

Appointment

Sec. 1. [The] Subject to Article VII, Section 1(c), the Board may appoint such committees or subcommittees as it deems necessary or desirable, and it shall fix their powers, duties, and terms of

office[; provided that such determinations are not inconsistent with requirements of the Delegation Plan]. Any such committee or subcommittee consisting solely of one or more Governors, to the extent provided by these By-Laws or by resolution of the Board, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the [Corporation] NASD.

Maintenance of Compositional Requirements of Committees

Sec. 2. Upon request of the Secretary of the NASD, each prospective committee member who is not a Governor shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary shall certify to the Board each prospective committee member's classification. Each committee member shall update the information submitted under this Section at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.

Removal of Committee Member

Sec. [2] 3. [Any] A member of [any] a committee or subcommittee appointed pursuant to this Article [VIII] may be removed from such committee or subcommittee only by a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge [his] such member's duties [or

for any cause the sufficiency of which shall be decided by the Board].

Executive Committee

Sec. 4. (a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware 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 the NASD between meetings of the Board, and which may authorize the seal of the NASD to be affixed to all papers that may require it.

(b) The Executive Committee shall consist of no fewer than five and no more than nine Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, at least one Director of NASD Regulation, at least one Director of Nasdaq, and at least two Governors who are not Directors of NASD Regulation or Nasdaq. The number of Directors of the NASD Regulation Board and the number of Directors of the Nasdaq Board serving on the Executive Committee shall be equal at all times. The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

(c) An Executive Committee member shall hold office for a term of one year.

(d) 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.

Audit Committee

Sec. 5. (a) The Board shall appoint an Audit Committee. The Audit Committee shall consist of four or five Governors, none of whom shall be officers or employees of the Association. A majority of the Audit Committee members shall be Non-Industry Governors. The Audit Committee shall include two Public Governors. A Public Governor shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(b) The Audit Committee shall perform the following functions: (i) ensure the existence of adequate controls and the integrity of the financial reporting process of the NASD; (ii) recommend to the NASD Board, and monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD; and (iii) direct and oversee all the activities of the NASD's internal review function, including but not limited to management's responses to the internal review function.

(c) No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular

NASD member, company, or individual if such Audit Committee member has a material interest in, or a professional, business, or personal relationship with, that member, company, or individual, or if such participation shall create an appearance of impropriety. An Audit Committee member shall consult with the General Counsel of the NASD to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.

(d) The Audit Committee shall have exclusive authority to: (i) hire or terminate the Director of Internal Review; (ii) determine the compensation of the Director of Internal Review; and (iii) determine the budget for the Office of Internal Review. The Office of Internal Review and the Director of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters the Audit Committee deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.

(e) At all meetings of the Audit Committee, a quorum for the transaction of business shall consist of a majority of the Audit 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.

Finance Committee

Sec. 6(a) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the NASD, including recommendations for the NASD's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD.

(b) The Finance Committee shall consist of four or more Governors. The Chief Executive Officer of the NASD shall be a member of the Finance Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the Chief Executive Officer of the NASD. A Finance Committee member shall hold office for a term of one year.

(c) At all meetings of the Finance Committee, a quorum for the transaction of business shall consist of a majority of the Finance 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.

ARTICLE X

COMPENSATION OF BOARD AND COMMITTEE MEMBERS

[Article VII, Sec. 5.]**Sec. 1.** The Board may provide for reasonable compensation of the [Chairman] Chair of the Board, the

Governors, and the members of any committee [of the Board from the Corporation]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the [Corporation] NASD.

ARTICLE [IX] XI

RULES

Sec. 1. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the [Corporation] NASD, to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, to protect investors and the public interest, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the [Corporation] NASD and of the Act, the Board [of Governors] is hereby authorized to adopt such [Rules of Fair Practice] rules for the members and persons associated with members, and such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such [Rules] rules or amendments thereto are approved by the Commission as provided in the Act, they shall become effective Rules of the Association as of such date as the Board [of Governors] may prescribe. The Board [of Governors] is hereby authorized, subject to the provisions of the By-Laws and the Act, to administer, enforce, suspend, or cancel any Rules of [Fair Practice] the

Association adopted hereunder.

ARTICLE [X] XII

DISCIPLINARY PROCEEDINGS

Sec. 1. The Board [of Governors] shall have authority to establish procedures relating to disciplinary proceedings involving members and their associated persons.

Sec. 2. Except as otherwise permitted under these By-Laws or the Act, in any disciplinary proceeding [before the Corporation] under the Rules of the Association, any member or person associated with a member shall be given the opportunity to have a hearing at which [he] such member or person associated with a member shall be entitled to be heard in person [and/or by counsel] or by counsel or by a representative as provided in the Rules of the Association. Such persons may present any relevant material in accordance with the Rules of the Association. In any such proceeding against a member or against a person associated with a member to determine whether the member [and/or] or the person associated with a member shall be disciplined:

(a) specific charges shall be brought;

(b) such member or person associated with a member shall be notified of and be given an opportunity to defend against such charges;

(c) a record shall be kept; and

(d) any determination shall include a statement setting forth:

[(1)] (i) any act or practice, in which such member or person associated with a member may be found to have engaged or which such member or person associated with a member may be found to have omitted;

[(2)] (ii) the rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;

[(3)] (iii) the basis upon which any findings are made; and

[(4)] (iv) the [penalty] sanction imposed.

ARTICLE [XI] XIII

POWERS OF BOARD TO [PRESCRIBE] IMPOSE SANCTIONS

Sec. 1. The Board is hereby authorized to [prescribe] impose appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of activities, functions, and operations of a member, or any other fitting sanction, and to [prescribe] impose appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:

(a) breach by a member or a person associated with a member of any covenant with the [Corporation] NASD or its

members;

(b) violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the [rules of the Corporation] By-Laws of the NASD, NASD Regulation, or Nasdaq, the Rules of the Association, or the federal securities laws, including the rules and regulations adopted thereunder, [and including] the rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department;

(c) failure by a member or person associated with a member to: (i) submit a dispute for arbitration [under the Code of Arbitration Procedure ("Arbitration Code")] as required by the [Arbitration Code] Rules of the Association[,]; [or to fail to] (ii) appear or [to] produce any document in [their] the member's or person's possession or control as directed pursuant to [provisions of] the [Arbitration Code] Rules of the Association[,]; [or to fail to honor] (iii) comply with an award of arbitrators properly rendered pursuant to the [Arbitration Code] Rules of the Association, where a timely motion [has not been made] to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (iv) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the

Association;

(d) refusal by a member or person associated with a member to abide by an official ruling of the Board or any committee exercising powers assigned by the Board with respect to any transaction which is subject to the Uniform Practice Code; or

(e) failure by a member or person associated with a member to adhere to any ruling, order, direction, or decision of[,] or to pay any [penalty,] sanction, fine, or costs[,] imposed by the Board[, or any committee exercising powers assigned by the Board] or any entity to which the Board has delegated its powers in accordance with the Delegation Plan.

Sec. 2. The Board may delegate its authority under this Article in accordance with the Delegation Plan.

ARTICLE [XII] XIV

UNIFORM PRACTICE CODE

Authority to Adopt Code

Sec. 1. The Board [of Governors] is hereby authorized to adopt a Uniform Practice Code and amendments, interpretations and explanations thereto, designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business with respect to such matters as trade terms, deliveries, payments, dividends, rights, interest, reclamations, exchange of confirmations, stamp taxes, claims, assignments, powers of substitution, computation of interest and

basis prices, due-bills, transfer fees, "when, as and if issued" trading, "when, as and if distributed" trading, marking to the market, and close-out procedure, all to the end that the transaction of day-to-day business by members may be simplified and facilitated, that business disputes and misunderstandings, which arise from uncertainty and lack of uniformity in such matters, may be eliminated, and that the mechanisms of a free and open market may be improved and impediments thereto removed.

Administration of Code

Sec. 2. The administration of any Uniform Practice Code, or any amendment thereto, adopted by the Board [of Governors] pursuant to Section 1 [of this Article], shall be vested in the Board [of Governors], and the Board is hereby granted such powers as are reasonably necessary to achieve its effective operation. In the exercise of such powers, the Board may issue explanations and interpretations and make binding rulings with respect to the applicability of the provisions of the Uniform Practice Code to situations in which there is no substantial disagreement as to the facts involved. [The] In accordance with the Delegation Plan, the Board may delegate to [appropriate committees such of its powers,] the NASD Regulation Board and the Nasdaq Board such of the Board's powers hereunder as it deems necessary and appropriate to achieve effective administration and operation of the Uniform Practice Code.

Transactions Subject to Code

Sec. 3. All over-the-counter transactions in securities by members, except transactions in securities which are exempted under Section 3(a)(12) of the Act, or are municipal securities as defined in Section 3(a)(29) of the Act, are subject to the provisions of the Uniform Practice Code and to the provisions of Section 2 [of this Article] unless exempted therefrom by the terms of the Uniform Practice Code.

ARTICLE [XIII] XV

LIMITATION OF POWERS

Prohibitions

Sec. 1. Under no circumstances shall the Board [of Governors] or any officer, employee, or member of the [Corporation] NASD have the power to:

(a) make any donation or contribution from the funds of the [Corporation] NASD or to commit the [Corporation] NASD for the payment of any donations or contributions for political or charitable purposes; or

(b) use the name of the facilities of the [Corporation] NASD in aid of any political party or candidate for any public office.

Use of Name of [Corporation] the NASD by Members

Sec. 2. No member shall use the name of the [Corporation] NASD except to the extent that may be [authorized by the Board of Governors] permitted by the Rules of the Association.

Unauthorized Expenditures

Sec. 3. No officer, employee, member of the Board [of Governors] or of any committee[,] shall have any power to incur or contract any liability on behalf of the [Corporation] NASD not authorized by the Board [of Governors]. The Board may delegate to the Chief Executive Officer of the [Corporation or his delegate] NASD or the Chief Executive Officer's delegate[,] such authority as it deems necessary to contract on behalf of the [Corporation] NASD or to satisfy unanticipated liabilities during the period between Board meetings.

Conflicts of Interest

Sec. 4.(a) A Governor or a member of [the Board of Governors or of any] a committee [of the Corporation] shall not directly or indirectly participate in any adjudication of the interests of any party if such [participation would violate the] Governor or committee member has a conflict of interest [provisions of the Procedural Rules of the Corporation] or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable

solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and NASD Regulation or Nasdaq.

Municipal Securities

Sec. 5. The provisions of the By-Laws conferring rulemaking authority upon the Board [of Governors] shall not be applicable to the municipal securities activities of members or persons associated with members to the extent that the application of such authority would be inconsistent with Section 15B of the Act.

[**Government Securities**

Sec. 6. The provisions of the By-Laws governing qualifications of members and persons associated with members and conferring rulemaking authority upon the Board of Governors shall

not be applicable to the Government securities activities of members or persons associated with members to the extent that the application of such provisions or authority would be inconsistent with Section 15A(f) of the Act.]

ARTICLE [XIV] XVI

PROCEDURE FOR ADOPTING AMENDMENTS TO BY-LAWS

Sec. 1. [Any member of the Board of Governors by resolution, any District Committee by resolution, or any twenty-five members of the Corporation by petition signed by such members,] A Governor or a committee appointed by the Board may propose amendments to these By-Laws. Any 25 members of the NASD by petition signed by such members may propose amendments to these By-Laws. Every proposed amendment shall be presented in writing to the Board [of Governors], and a record shall be kept thereof. The [board of Governors] Board may adopt any proposed amendment to these By-Laws by affirmative vote of a majority of the [members of the Board of] Governors then in office. The Board [of Governors], upon adoption of any such amendment to these By-Laws, except as otherwise provided in these By-Laws, shall forthwith cause a copy to be sent to and voted upon by each member of the [Corporation] NASD. If such amendment to these By-Laws is approved by a majority of the members voting within [thirty (30)] 30 days after the date of submission to the membership, and is approved by the Commission as provided in the Act, it shall become effective as of such date as the Board [of Governors] may prescribe.

ARTICLE [XV] XVII

CORPORATE SEAL

Sec. 1. The corporate seal shall have inscribed thereon the name of the [Corporation] NASD, the year of its organization and the words "Corporate Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be imposed or affixed or reproduced or otherwise.

ARTICLE [XVI] XVIII

CHECKS

Sec. 1. All checks or demands for money and notes of the [Corporation] NASD shall be signed by such officer or officers or such other person or persons as the Board [of Governors] may from time to time designate.

ARTICLE [XVII] XIX

ANNUAL FINANCIAL STATEMENT

Sec. 1. As soon as practicable after the end of each fiscal year, the Board [of Governors] shall send to each member of the [Corporation] NASD a reasonably itemized statement of receipts and expenditures of the [Corporation] NASD for such preceding fiscal year.

ARTICLE XX

RECORD DATES

Fixing of Date by Board

Sec. 1. In order that the NASD may determine the members entitled to notice of or to vote at any meeting of members or any

adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, pursuant to Section 213 of the General Corporation Law of the State of Delaware. Only such members as shall be members of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent.

Default Date

Sec. 2. If no record date is fixed by the Board, the record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

Adjournment

Sec. 3. A determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE XXI

MEETINGS OF MEMBERS

Annual Meeting

Sec. 1. The annual meeting shall be on such date and at such place as the Board shall designate. The business of the meeting

shall include: (a) election of the members of the Board pursuant to Article VII, Section 13; and (b) the proposal of business (i) by or at the direction of the Chairman of the Board or the Board, or (ii) by any member entitled to vote at the meeting who complied with the notice procedures set forth in Section 3 and was a member at the time such notice was delivered to the Secretary of the NASD.

Special Meetings

Sec. 2. A special meeting shall be on such date and at such place as the Board shall designate. Only such business shall be conducted at a special meeting as shall have been brought before the meeting pursuant to Section 3(a); provided, however, that in no event shall the announcement to the members of an adjournment of a special meeting commence a new time period for the giving of notice.

Notice of Meeting; Member Business

Sec. 3. (a) Notice of each meeting shall be written or printed; shall state the date, time, and place of the meeting; shall state the purpose or purposes for which the meeting is called; and unless it is the annual meeting, indicate that the notice is being issued at the direction of the person or persons calling the meeting. The Secretary of the NASD shall deliver the notice to the Executive Representative of each member entitled to vote not less than 30 days nor more than 60 days before the date of an annual meeting and not less than ten days nor more than 60 days before the date of a special meeting. If mailed, the notice shall

be deemed to be delivered when deposited with postage in the United States mail and addressed to the Executive Representative of the member as it appears on the records of the NASD. Such further notice shall be given as may be required by law. Meetings may be held without notice if all members entitled to vote are present (except as otherwise provided by law), or if notice is waived by those not present. Any previously scheduled meeting of the members may be postponed and any special meeting of the members may be canceled by resolution of the Board upon notice given to the members prior to the time previously scheduled for the meeting.

(b) For business other than the election of Governors to be brought properly before an annual meeting by a member pursuant to Section 1, the member must have given timely notice thereof in writing to the Secretary of the NASD and such other business must otherwise be a proper matter for member action. To be timely, a member's notice shall be delivered to the Secretary at the NASD's principal executive offices within 25 days after the date of the notice of the meeting. Such member's notice shall set forth a brief description of the business desired to be brought before the meeting, any material interest of the member in such business, and the reasons for conducting such business at the meeting. In no event shall the announcement to the members of an adjournment of an annual meeting commence a new time period for the giving of a member's notice as described above.

(c) Except as otherwise provided by applicable law, the

Restated Certificate of Incorporation, or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether any nomination or other business proposed to be brought before the meeting pursuant to subsection (b) or Article VII, Section 10 was made in accordance with the procedures set forth herein and, if any proposed nomination or business is not in compliance with these By-Laws, to declare that such defective nomination or proposal shall be disregarded.

Inspector

Sec. 4. At each meeting of the members, the polls shall be opened and closed, the proxies and ballots received and taken in charge, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided by an inspector appointed by the Secretary of the NASD before the meeting, or in default thereof by the chairman of the meeting. If the inspector previously appointed fails to attend or refuses or is unable to serve, a substitute shall be appointed by the chairman of the meeting. The inspector shall not be a Governor, officer, or employee of the NASD or a director, officer, partner, or employee of an NASD subsidiary or member.

Conduct of Meetings

Sec. 5. The chairman of the meeting shall be the Chief Executive Officer of the NASD or his or her designee. The date and time of the opening and closing of the polls for each matter upon which the members will vote at a meeting shall be announced at the

meeting by the chairman of the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of members as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations, and procedures and to do all such acts as, in the judgment of the chairman of the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to members, their duly authorized and constituted proxies, or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of members shall not be required to be held in accordance with the rules of parliamentary procedure.