

subscription for \$15,000 annually. One commentator (Condic) states that the proposed Daily Transaction Report should be made available free of charge. Another commentator (TBMA) urges the Board to make transaction information available, electronically and without charge, to dealers for their internal use in market analysis and in their compliance efforts. As noted above, the Board has decided to make subscriptions to the proposed report free. Subscribers, however, will need to sign a subscription agreement that outlines the Board's disclaimer of liability, the proprietary nature of and usage restrictions on the CUSIP numbers and CUSIP descriptions contained in the report, and certain other matters.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the MSRB consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal office. All submissions should refer to File No. SR-MSRB-99-8 and should be submitted by November 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-42091; File No. SR-NASD-99-15)

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the National Adjudicatory Council's Call For Review of Membership Decisions

November 2, 1999.

#### I. Introduction

On March 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to temporarily suspend the National Adjudicatory Council's ("NAC's") oversight of membership applications approved by district staff. On April 16, 1999, the Association filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change and amendment were published in the **Federal Register** on April 26, 1999.<sup>4</sup> On October 20, 1999, the NASD filed Amendment No. 2 to the proposal.<sup>5</sup> The Commission received no comments on the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (April 16, 1999) ("amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 41311 (April 20, 1998), 64 FR 20347.

<sup>5</sup> See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission (October 18, 1999) ("Amendment No. 2"). In Amendment No. 2, the NASD requests that the proposed end date of the temporary suspension of NASD Rule 1015 be changed from October 31, 1999 to December 31, 1999.

interested persons on Amendment No. 2.

#### II. Description of the Proposal

The purpose of the proposed rule change is to temporarily suspend the NAC's oversight responsibilities under NASD rule 1015 requiring review of membership decisions made by NASD district staff, while the Association considers other options for review of the membership admission process. Currently, NASD Rule 1015(a)(2) provides that a membership decision rendered by the Department of Member Regulation shall be subject to a call for review by the NAC. According to the NASD, the NAC has never been able to adequately perform this function. Therefore, the Association proposes formal suspension of this function until December 31, 1999,<sup>6</sup> while it attempts to devise and implement new review procedures.

In August 1997, the SEC approved substantial revisions to the membership review processes to conform the rules to the requirements of the August 8, 1996 SEC Order correcting abuses in certain NASD procedures ("Order").<sup>7</sup> Following the Order, the authority to approve membership application was transferred from NASD District Business Conduct Committees to NASD Regulation staff.<sup>8</sup> Applicants granted restricted membership or refused admission could appeal to the National Business Conduct Committee ("NBCC"), the NAC's predecessor, which was also charged with oversight of admissions.<sup>9</sup> During consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions. Nonetheless, the NBCC, which requested the change, was primarily concerned about decisions approving unrestricted memberships. Since a successful applicant would have no incentive to appeal an unrestricted admission, the NBCC wished to have a

<sup>6</sup> *Id.*

<sup>7</sup> Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc.).

<sup>8</sup> Securities Act Release Nos. 39350 (Nov. 21, 1997), 62 FR 64000 (Dec. 3, 1997) and 39470 (Dec. 19, 1997), 62 FR 67927 (Dec. 30, 1997) (Notice and Notice and Accelerated Approval of File No. SR-NASD-97-81, respectively.)

<sup>9</sup> The Association asserts that during consideration of the revisions to the NASD admissions process in 1997, the call for review provision was included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions.

mechanism to review the unrestricted admissions, if warranted.

The Association has never been able to implement the NAC's call for review authority. The NASD states that several attempts have been made to do so, none of the procedures tried have been particularly effective.<sup>10</sup> Therefore, the NAC and the NASD Board agreed to request temporary suspension of the NAC's review responsibilities. At the same time, the Association asserts that it will review the NASD Rule 1010 Series admissions procedures in their entirety, including the role of the NAC in that process. The Association expects to conclude its review by December 31, 1999.<sup>11</sup>

### III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>12</sup> and particularly Section 15A(b)(8) thereof.<sup>13</sup> Section 15A(b)(8) requires that the rules of a national securities association provide a fair procedure for the denial of membership to any person seeking membership therein.<sup>14</sup> This must be balanced against the more general requirement that the rules of a national securities association promote the public interest and the protection of investors. Thus, while the Commission finds that it is reasonable to temporarily suspend the NAC's call for review responsibilities until December 31, 1999,<sup>15</sup> during that time the Association must actively seek to develop an effective mechanism for reviewing unrestricted memberships approved by its district office staff, which the NASD has represented may be heightened oversight NASD headquarters staff of the NASD district membership decisions.<sup>16</sup>

The Commission notes, notwithstanding its approval of the Association's proposal to temporarily suspend NASD Rule 1015, the NASD is

still responsible for all oversight of membership admissions decisions, both restricted and unrestricted. In addition, during the temporary suspension of NASD Rule 1015, the approved procedures for the denial of membership to any person seeking NASD membership will not be affected. In approving the Association's proposal, the Commission relies upon the NASD's representation that the proposed rule change will neither alter a membership applicant's ability to independently seek NAC review of a membership decision, nor prejudice a membership applicant's rights under the NASD Rules.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 changes the proposed end date of the temporary suspension of NASD Rule 1015 from October 31, 1999, to December 31, 1999. The Commission believes that the extension of the temporary suspension of NASD Rule 1015 is reasonable in light of the efforts taken by the NASD to find an appropriate resolution for the review of membership decisions. The Commission notes that in NASD Notice to Members 99-67 the NASD published its recommendations for new procedures for the review of membership decisions for membership comment. The Commission believes an extension of the temporary suspension of NASD Rule 1015 should provide the Association with adequate time to consider and integrate any comments into the review procedures that will ultimately be implemented. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(8) and 19(b) of the Act,<sup>17</sup> to approve Amendment No. 2 to the proposal on an accelerated basis.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-15 and should be submitted by [insert date 21 days from the date of publication].

### V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change, as amended, (SR-NASD-99-15) is temporarily approved, until December 31, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42086; File No. SR-NYSE-99-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

November 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 28, 1999, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 1, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.<sup>3</sup> The

<sup>10</sup> For example, the Association contemplated limiting the number of staff decisions to be considered for a call for review by focusing the process on certain categories of decisions, such as only new member application decisions or certain types of business expansions. The NASD determined, however, that such a procedure might be perceived as biased against those firms that fell within a selected category.

<sup>11</sup> See note 5, above.

<sup>12</sup> 15 U.S.C. 78o-3.

<sup>13</sup> 15 U.S.C. 78o-3(b)(8).

<sup>14</sup> *Id.*

<sup>15</sup> See note 5, above.

<sup>16</sup> The Commission notes that even prior to the noticing of this proposed rule change the NASD represented that it was working to achieve a workable solution to the implementation problems, and that significant progress was being made. This representation is critical to the Commission's approval of this proposal.

<sup>17</sup> 15 U.S.C. 78o-3(b)(8) and 78s(b).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 to the proposed rule change requests that the Commission exercise its discretionary authority under rule 19b-4(f)(6)(iii) of