

April 17, 2003

Via Electronic Mail and Hand Delivery

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2003-55 Amendment No. 1 - Proposed Amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.

Dear Ms. England:

Pursuant to Rule 19b-4 under the Securities Exchange Act ("Act"), the National Association of Securities Dealers, Inc. ("NASD") hereby submits to the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 1 to SR-NASD-2003-55 (the "Rule Filing") relating to proposed amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.

For your convenience, attached as Exhibit 4 is the text of the proposed rule change with redlined additions and deletions to reflect the amendments described in this Amendment No. 1. We have also attached a new Exhibit 1 that includes the text of the proposed rule change, redlined to reflect the proposed amendments from existing NASD rule text. This Exhibit 1 replaces, in its entirety, the one filed on March 21, 2003. Unless otherwise indicated, proposed additions are underlined and proposed deletions are bracketed. Also enclosed is a 3-1/2" disk containing Exhibit 1 in Microsoft Word 7.0 to facilitate production of the Federal Register release.

In response to comments from the Commission staff, NASD hereby proposes to amend the proposed rule filing as described below:

- Article VIII, Section 8.2 – We have underlined "(b)" to indicate that a new subsection has been added;

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- Article VIII, Section 8.3 – We have underlined two spaces at the end of the first sentence to indicate that they are new text, and we have added a period at the end of the second sentence and underlined it to indicate that it is new text;
- Article VIII, Section 8.4 – To clarify the cross references to Section 8.2 in the paragraph, we have added specific references to Section 8.2(d) and Section 8.2(a) and underlined them to indicate that they are new text;
- Article VIII, Section 8.9 – We have underlined “(b)” to indicate that a new subsection has been added;
- Article VIII, Section 8.10 – We have underlined two spaces at the end of the first sentence to indicate that they are new text;
- Article VIII, Section 8.11 – To clarify the cross references to Section 8.9 in the paragraph, we have added specific references to Section 8.9(d) and Section 8.9(a) and underlined them to indicate that they are new text;
- Article VIII, Section 8.12 – To clarify the references to “Committee” in the paragraph, we have added the text “District Nominating” in four places and underlined them to indicate that they are new text, and we have deleted an extra period at the end of the paragraph; and
- Article VIII, Section 8.20 – We have deleted the “s” at the end of the word “Sections” to make it singular.

If you have any questions or comments, please contact Kosha K. Dalal, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-6903; e-mail kosha.dalal@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Kosha K. Dalal
Assistant General Counsel

Enclosures

cc: Gordon Fuller
Ann Leddy

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- [leave space] ; File No. SR-NASD-2003-55)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April __, 2003, the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to amend Article VIII (District Committees and District Nominating Committees) of the By-Laws of NASD Regulation, Inc. to streamline the

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR § 240.19b-4.

³ 17 CFR § 240.19b-4.

nomination and election processes governing District Committees and District Nominating Committees, modernize communication procedures, and improve the consistency among the Committees across all districts. In addition, NASD is proposing technical revisions to Article VIII to replace references to “the Association” with “NASD.” Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

ARTICLE VIII

DISTRICT COMMITTEES AND DISTRICT NOMINATING COMMITTEES

Establishment of Districts

Sec. 8.1 The Board shall establish boundaries for districts within the United States to assist NASD [Regulation] in administering its affairs in a manner that is consistent with applicable law, the Restated Certificate of Incorporation, these By-Laws, the Delegation Plan, and [the] NASD Rules [of the Association]. The Board may make changes from time to time in the number or boundaries of the districts as it deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new district configuration in the event of a change in the number or boundaries of the districts.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall consist of no fewer than five and no more than 20 members, unless otherwise provided by resolution of the Board. Subject to

the limitation set forth in the immediately preceding sentence, the authorized number of members of a District Committee shall be determined from time to time by the Board; provided, however, that no decrease in the authorized number of members of a District Committee shall shorten the term of office of any member thereof. Each District Committee member shall: (1) be employed [in the office of] by an NASD member eligible to vote in the district for District Committee elections, and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Committee. [A District Committee shall determine the number of its members to be elected each year.] Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with [the] NASD Rules [of the Association]. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor[, in such manner as they deem appropriate,] to educate NASD members and other brokers and dealers in their respective districts as to the objects, purposes, and work of [the] NASD[, NASD Regulation, and Nasdaq] in order to foster NASD members' interest and cooperation.

(b) A member of a District Committee may resign at any time upon giving Notice to the District Director. Any such resignation shall take effect upon receipt of such Notice or at any later time specified therein, provided that notice of resignation at a later date may be made immediately effective at the discretion of the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s). The acceptance of such resignation shall not be necessary to make such resignation effective.

(c) [(b)] In the event of the refusal, failure, neglect, or inability of a member of a District Committee to discharge his or her duties, or for any cause affecting the best interests of NASD [Regulation], the sufficiency of which shall be decided by the District Committee, the District Committee may remove the member by the affirmative vote of two-thirds of the members of the District Committee then in office and declare the member's position vacant. The District Committee shall notify the District Committee member of his or her removal within seven days after the vote. [The member's position shall be filled pursuant to Section 8.4.] A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified of the removal. The Board may affirm, reverse, or modify the determination of the District Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Committee.

(d) In the event of a vacancy in a District Committee resulting from death, resignation, removal, or other cause, the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) shall determine whether such vacancy shall be filled prior to the next regularly scheduled election of District Committee members. In the event the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines that a vacancy on a District Committee should be filled, the vacancy shall be filled pursuant to Section 8.4.

Term of Office of District Committee Members

Sec. 8.3 Each regularly elected member of a District Committee shall hold office for a "full term" [of three years] which is the later of three years or until a successor is elected and qualified. Notwithstanding the term of office for a regularly elected member, such member's term shall terminate sooner upon the member's [, or until] death, resignation, or removal. [A member of a District Committee may not serve more than two consecutive terms.] There is no limit on the number of terms that may be served by a member of a District Committee, provided, that no more than two terms may be served consecutively. The word "term" as used for the purpose of this Section shall mean either a full term for a regularly elected member or a "partial term" which is a term served by a member appointed to fill a vacancy on the District Committee created by the termination of a regularly elected member's office prior to the expiration of the full term.

Filling of Vacancies on District Committees

Sec. 8.4 In the event of a vacancy on a District Committee [caused by the departure of a Committee member] prior to the expiration of the member's term of office, and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.2(d), that such vacancy should be filled, or in the event of a newly created membership on a District Committee by virtue of an increase in the authorized number of members thereof, the District Committee shall appoint by majority vote a representative of an NASD member eligible pursuant to Section 8.2(a) [to vote in the district]to fill the vacancy or newly created membership. The appointment by the District

Committee shall be effective until the next regularly scheduled election [occurs], and until such member's successor is elected and qualified. Following the next regularly scheduled election, in the event of a vacancy, the newly elected Committee member shall serve only the duration of the departed Committee member's term, and in the event of a newly created membership, the newly elected Committee member shall serve only the duration of the term for such class of membership.

Meetings of District Committees

Sec. 8.5 Meetings of a District Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as [each District Committee] the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) in [its] his or her discretion may determine in consultation with the Chair of the District Committee. A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority present at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Any or all members of a District Committee may participate in any such meeting by means of conference telephone or other communications equipment by means of which all participants can communicate with each other, and such participation shall constitute presence in person at the meeting. Action by a District Committee may be taken by consent in writing or by electronic transmission in lieu of a meeting [mail, telephonic, or telegraphic vote], in which case any action taken by a majority of the Committee shall

constitute the action of the Committee. [Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee.]

Election of District Officers

Sec. 8.6 At or following its last regularly scheduled meeting of the calendar year, [Following the annual election of members of the District Committees pursuant to this Article] each District Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws[, and shall prescribe their powers and duties].

Advisory Council

Sec. 8.7 (a) The Chairs of the District Committees, elected pursuant to Section 8.6, together with the Chair of the Market Regulation Committee shall constitute an Advisory Council to the Board.

(b) The Advisory Council shall be advised of and entitled to attend such meetings of the Board as the Board may designate for such Advisory Council's attendance, and the Board shall designate at least one such meeting annually. The Advisory Council shall not be entitled to vote at meetings of the Board.

Expenses of District Committees

Sec. 8.8 Funds to meet the regular expenses of each District Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five members, unless the Board by resolution increases a District Nominating Committee to a larger number. Each District Nominating Committee member shall: (1) be employed [in the office of]by an NASD member eligible to vote in the district for District Committee elections, and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Nominating Committee, but shall not be a member of the District Committee. A majority of the members of the District Nominating Committee shall include [a majority of] persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the NASD Board[, and shall include at least one current or former Director or Governor].

(b) A member of a District Nominating Committee may resign at any time upon giving Notice to the District Director. Any such resignation shall take effect upon receipt of such Notice or at any later time specified therein, provided that notice of resignation at a later date may be made immediately effective at the discretion of the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s). The acceptance of such resignation shall not be necessary to make such resignation effective.

(c) [(b)] In the event of the refusal, failure, neglect, or inability of a member of a District Nominating Committee to discharge his or her duties, or for any cause affecting

the best interests of NASD [Regulation], the sufficiency of which shall be decided by the District Nominating Committee, the District Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the District Nominating Committee then in office and declare the member's position vacant. [The member's position shall be filled pursuant to Section 8.11.] The District Nominating Committee shall notify the District Nominating Committee member of his or her removal within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the District Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Nominating Committee.

(d) In the event of a vacancy in a District Nominating Committee resulting from death, resignation, removal, or other cause, the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) shall determine whether such vacancy shall be filled prior to the next regularly scheduled election of District Nominating Committee members. In the event the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines that a vacancy on a District Nominating Committee should be filled, the vacancy shall be filled pursuant to Section 8.11.

Term of Office of District Nominating Committee Members

Sec. 8.10 Each regularly elected member of a District Nominating Committee shall hold office for a "full term" [of one year] which is the later of one year [and] or until a successor is elected and qualified. Notwithstanding the term of office for a regularly elected member, such member's term shall terminate sooner upon the member's [, or until]death, resignation, or removal. [A member of a District Nominating Committee may not serve more than two consecutive terms.]There is no limit on the number of terms that may be served by a member of a District Nominating Committee, provided, that no more than two terms may be served consecutively. The word "term" as used for the purpose of this Section shall mean either a full term for a regularly elected member or a "partial term" which is a term served by a member appointed to fill a vacancy on the District Nominating Committee created by the termination of a regularly elected member's office prior to the expiration of the full term.

Filling of Vacancies for District Nominating Committees

Sec. 8.11 In the event of a vacancy on a District Nominating Committee [caused by the departure of a Committee member] prior to the expiration of the member's term of office, and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.9(d), that such vacancy should be filled, or in the event of a newly created membership on a District Nominating Committee by virtue of an increase in the authorized number of members thereof, the District Nominating Committee shall appoint by majority vote a representative of an NASD member eligible pursuant to Section 8.9(a)

[to vote in the district]to fill the vacancy or newly created membership. The appointment shall be effective until the next regularly scheduled election [occurs] pursuant to this Article, and until such member's successor is elected and qualified.

Meetings of District Nominating Committees

Sec. 8.12 Meetings of a District Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as [each District Nominating Committee] the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) in [its] his or her discretion may determine in consultation with the Chair of the District Nominating Committee. A quorum of a District Nominating Committee shall consist of a majority of its members, and any action taken by a majority [of the entire Committee]present at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the District Nominating Committee. Any or all members of a District Nominating Committee may participate in any such meeting by means of conference telephone or other communications equipment by means of which all participants can communicate with each other, and such participation shall constitute presence in person at the meeting. Action by a District Nominating Committee may be taken by consent in writing or by electronic transmission in lieu of a meeting [mail, telephonic, or telegraphic vote], in which case any action taken by a majority of the District Nominating Committee shall constitute the action of the District Nominating Committee. [Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee].[.]

Election of District Nominating Committee Officers

Sec. 8.13 Following the annual election of members of the District Nominating Committees pursuant to this Article, each District Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws[, and shall prescribe their powers and duties].

Expenses of District Nominating Committees

Sec. 8.14 Funds to meet the regular expenses of each District Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to [Chair] District Nominating Committee

Sec. 8.15 On or before [May 1]June 1 of each year, the Secretary of NASD [Regulation] shall give a Notice [send a written notice] to [the Chair of] each District Nominating Committee member and each District Director [and each District Committee] identifying the members of the District Nominating Committee and the District Committee whose terms of office shall expire in the next calendar year. The Notice [notice] shall describe election procedures for filling the offices.

Solicitation of Candidates and Secretary's Notice to NASD Members

Sec. 8.16 The Secretary of NASD shall give a Notice of the upcoming election to NASD members and the Executive Representatives of NASD members describing the election procedures and stating that NASD members may submit names of candidates for consideration to the District Director. NASD [Regulation] staff shall provide the District

Nominating Committee with a description of the NASD membership in the district. The District Nominating Committee shall identify and solicit candidates to nominate for election to [the vacancies on] the District Committee and the District Nominating Committee. [The District Nominating Committee Chair shall send a written notice of the upcoming election to the Executive Representative and each branch office of the NASD members in the district and request that such NASD members submit names of candidates to the District Nominating Committee or the District Director for consideration.]

[Secretary's Notice to NASD Members]

[**Sec. 8.17** The Secretary of NASD Regulation shall send a written notice to NASD members in the district describing the election procedures.]

District Nominating Committee Slate

Sec. 8.17 [**Sec. 8.18**] (a) The District Nominating Committee shall review the background of proposed candidates and the description of the NASD membership provided by NASD [Regulation] staff and shall nominate a slate of candidates for the election. The slate shall include one [or more] candidate[s] for each position on the District Committee and the District Nominating Committee subject to election at the next annual election [vacancy]. In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and [all] various classes and types of NASD members engaged in the investment banking or securities business within the district. In nominating

candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

(b) A District Nominating Committee shall not nominate an incumbent member of the District Committee to succeed himself or herself on the District Committee [unless the District Nominating Committee first takes appropriate action by a written ballot of the entire NASD membership within the district to ascertain that such nomination is acceptable to a majority of the NASD members in the district,] unless the incumbent member of the District Committee is serving pursuant to the provisions of Section 8.4 or is serving a term pursuant to the provisions of Section 8.2 and reelection would not cause the incumbent member to violate the provisions of Section 8.3. A District Nominating Committee may not nominate more than two incumbent members of the District Nominating Committee to succeed themselves.

[Certification] Notification of Nomination

Sec. 8.18 [**Sec. 8.19**] The District Director, acting on behalf of the District Nominating Committee, shall give a Notice to the Secretary of NASD of [certify to the District Committee] each candidate nominated by the District Nominating Committee and the office to which the candidate is nominated. [Within five calendar days after the certification, the District Committee shall send to the Executive Representatives of NASD members in the district a copy of the certification.] On or before October 1 of each year, the Secretary of NASD shall give a Notice of the nominated candidates to the Executive Representatives of NASD members and the District Committee.

Uncontested Election

Sec. 8.19 If the District Nominating Committee nominates one candidate for each position on the District Committee and the District Nominating Committee subject to election at the next annual election and no additional candidate is nominated pursuant to Section 8.22, the candidates nominated by the District Nominating Committee shall be considered duly elected.

Designation of Additional Candidates

Sec. 8.20 If an officer, director, or employee of an NASD member who meets the qualifications of Section 8.2 or 8.9, as applicable, is not nominated by the District Nominating Committee and wants to be considered for election to [a vacancy on] the District Committee or the District Nominating Committee, he or she shall deliver [send] a written notice to the District Director within 14 calendar days after the Secretary of NASD gives the Notice of nominated candidates [the mailing date of the certification to the Executive Representatives] pursuant to Section 8.18[9]. The District Director shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."

List of NASD Members Eligible to Vote

Sec. 8.21 (a) The Secretary of NASD [Regulation] shall provide a list of all NASD members eligible to vote in the district, their mailing addresses, and their Executive Representatives to the additional candidate promptly [immediately] following receipt of the additional candidate's timely notice by the District Director.

(b) An NASD member that has its principal office[, and/or one or more registered branch offices[, or its principal office and one or more registered branch offices] in the district shall be eligible to cast one vote through the NASD member's Executive Representative for each position on the District Committee and the District Nominating Committee [vacancy] to be filled in the election.

Requirement for Petition Supporting Additional Candidate

Sec. 8.22 An additional candidate shall be nominated if a petition signed by at least ten percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the date of the mailing of the list to the additional candidate pursuant to Section 8.21. Only an Executive Representative may sign a petition on behalf of an NASD member.

[Uncontested Election]

[**Sec. 8.23** If the District Nominating Committee nominates one candidate for each vacancy and no additional candidate is nominated pursuant to Section 8.22, the candidates nominated by the District Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board.]

Notice of Contested Election

Sec. 8.23 [**Sec. 8.24**] If [the District Nominating Committee nominates more than one candidate for vacancy, or if] an additional candidate is nominated pursuant to Section 8.22, the election shall be considered a contested election. The Secretary of NASD shall give a Notice [District Committee shall send a notice] to the Executive Representatives of [the] NASD members eligible to vote in the district announcing the names of the

candidates and the office to which each candidate is nominated and describing contested election procedures.

Administrative Support

Sec. 8.24 [Sec. 8.25] The District Office shall provide administrative support to all candidates by sending, by electronic transmission, to NASD members eligible to vote in the district up to two distributions [mailings] of materials prepared by the candidates. [NASD Regulation shall pay the postage for the mailings.] If a candidate wants such distributions [mailings] sent, the candidate shall prepare such material on the candidate's personal stationery and make the material available to NASD in electronic format. The material shall state that it represents the opinion of the candidate. [The candidate shall provide a copy of the material for each member of the NASD in the district.] Candidates nominated by the District Nominating Committee may identify themselves as such in their materials. Any candidate also may send [additional] mailings at the candidate's own expense. Except as provided in this Article, NASD [Regulation], the Board, the Regional Nominating Committee, any other committee, and NASD [Regulation] staff shall not provide any other administrative support to a candidate in the election.

Ballots

Sec. 8.25 [Sec. 8.26] With the assistance of the Secretary of NASD [Regulation] and an Independent Agent, the District Nominating Committee shall prepare a ballot with the names of the District Nominating Committee's candidates and any additional candidate nominated pursuant to Section 8.22 and the office to which each candidate is nominated. The ballot shall list separately, in alphabetical order, the candidates [in alphabetical order

and shall identify the candidates] nominated by the District Nominating Committee and the additional candidates nominated pursuant to Section 8.22. The Secretary of NASD [District Nominating Committee] shall send a ballot to the Executive Representative of each NASD member eligible to vote in the district. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than [30]20 and no more than [45]30 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 8.26 [Sec. 8.27] Eligibility to vote in a district election shall be based on [the] NASD's membership records as of a date selected by the Secretary of NASD [Regulation] that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD [Regulation] shall prepare a list of NASD members eligible to vote in the district, their mailing addresses, and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned as Undelivered

Sec. 8.27 [Sec. 8.28] The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 8.28 [Sec. 8.29] After the voting period, on a date or dates designated by the Secretary of NASD [Regulation], the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 8.25[6]. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to [the district office] a location within the district agreed to between the Independent Agent and the Secretary of NASD all ballots timely received. Under the direction of the Secretary of NASD [Regulation] or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the district and their Executive Representatives as prepared by the Secretary of NASD [Regulation] pursuant to Section 8.26[7]. The Secretary of NASD [Regulation] or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 8.29 [Sec. 8.30] The Independent Agent shall set aside a ballot if: (a) the ballot is received from an NASD member eligible to vote in the district and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 8.26[7], and the Secretary of [the] NASD has not received proper notice of a change in Executive Representative pursuant to [the] NASD By-Laws; or (b) if two or more properly executed ballots are received from an NASD member eligible to vote in the district. If the Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of NASD [Regulation] and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD [Regulation] shall contact the NASD member to request that the NASD member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD [Regulation] shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD [Regulation] shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.30 [Sec. 8.31] The Independent Agent shall declare a ballot invalid if one or more of the following conditions exist:

(a) the ballot is not signed by the Executive Representative (unless Section 8.29[30] applies);

(b) a vote is not indicated on the ballot; or

(c) the ballot indicates votes for more candidates than there are positions on the District Committee or District Nominating Committee subject to election in the election [vacancies for an office].

[Certification of] Election Results

Sec. 8.31 [Sec. 8.32] Under the direction of the Secretary of NASD [Regulation] or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee or District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of positions [vacancies] on the District Committee or District Nominating Committee subject to election in the election. [The candidates for the office of member of the District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Nominating Committee.] In the event of a tie, there shall be a run-off election. The Secretary of NASD shall notify the Board of the election results. [Each District Committee shall send a written certification of the election results to the Board.] The notification [certification] shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.32 [Sec. 8.33] The Secretary of NASD [Regulation] may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD [Regulation], with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Definitions

Sec. 8.33 (a) When used in Article VIII of these By-Laws, the term "Notice" means a notice in writing or by electronic transmission and the term "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) For purposes of this Article VIII, any notice by NASD, the Secretary of NASD, or the District Director given by electronic transmission shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the person entitled to notice has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the person entitled to notice has consented to receive notice; (3) if by a posting on an electronic network when the person entitled to notice has consented to receive notice in this manner, together with separate notice to the person entitled to notice of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission when the person entitled to notice has consented to receive notice in this manner, when

directed to the person entitled to notice. For purposes of this Article VIII, if mailed, any such notice by NASD, the Secretary of NASD, or the District Director shall be deemed given when deposited in the United States mail, postage prepaid, directed to the person entitled to notice at such person's address as it appears on the records of NASD.

* * * * *

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Article VIII of NASD Regulation By-Laws ("By-Laws") sets forth provisions relating to the operation of District Committees and District Nominating Committees (collectively, "Committees"), including specifically, provisions regarding Committee meetings, vacancies and elections. Under Article VIII, the role of the District Committee members includes serving as panelists in disciplinary proceedings in accordance with NASD Rules, recommending policy and rule changes to the Board, educating members in their district, and selecting members of the regional District Committee and District

Nominating Committees in a manner consistent with Article VIII of the By-Laws. The role of the District Nominating Committee includes nominating candidates to serve on the District Committee and District Nominating Committee for that region.

Currently, there are 11 District Committees, divided by geographic region. Based on the experience of NASD staff in working with the Committees since that time, and the current practices of the Committees, NASD is proposing a series of amendments to modernize and clarify the Article VIII provisions. The proposed changes are designed to streamline the nomination and election processes by, among other things, centralizing the communication procedures in the Corporate Secretary's Office, revising the nomination and election timeline, and modernizing the methods of communication by permitting electronic delivery of documents. In addition, the proposed amendments would improve coordination and consistency among the Committees across the districts, modify the procedures to fill vacancies, and provide for more administrative flexibility. The key proposed amendments are discussed below.

Section 8.2 (Composition of District Committees) and Section 8.9 (Composition of District Nominating Committees)

Create Consistency in Size of Committee. Currently, Section 8.2(a) provides that each District Committee will determine how many members to elect each year. To create more consistency in District Committee sizes across districts, the proposed amendments would allow the Board of Directors ("Board") to determine the size of each Committee.

Establish Qualifications to Serve on Committee. Currently, Section 8.2 and Section 8.9 provide that each Committee member must be employed by an NASD member eligible to vote in such district. The proposed amendments clarify additional qualifications

necessary to serve as a member of a Committee. The proposed amendments provide that a member must: (1) be employed by an NASD member eligible to vote in the district for District Committee elections; and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a Committee. NASD believes the additional qualifications will ensure that Committee members have a significant connection to the District in which they serve.

Eliminate Requirement in Section 8.9 that One District Nominating Committee Member be a Current or Former Director. The proposed amendments would eliminate the current requirement contained in Section 8.9 that at least one member of the District Nominating Committee be a current or former Director or Governor. Based on the experience of NASD staff, it has become increasingly difficult to satisfy this composition requirement.

Section 8.3 (Term of Office of District Committee Member) and Section 8.10 (Term of Office of District Nominating Committee Member)

Clarify Term of Office. Currently, Section 8.3 and Section 8.10 provide that Committee members may not serve more than two consecutive terms. The proposed amendments to these provisions will clarify that there is no limit on the number of terms that a Committee member may serve, provided a member may not serve more than two consecutive terms. The word "term" would be defined to include either a full term (three years for District Committees or one year for District Nominating Committees) or any partial term where a member is appointed to fill a vacancy. NASD believes that this will allow for greater member participation in the Committees over time.

Section 8.4 (Filling of Vacancies on District Committee) and Section 8.9 (Filling of Vacancies for District Nominating Committees)

Streamline Process for Filling Vacancies. Proposed new Sections 8.2(b) and (d) and Sections 8.9(b) and (d) would clarify that Committee members may formally resign from their positions by serving a notice to the Chair. In addition, the proposed new provisions provide a process for filling vacancies. Under the proposed amendments, the Executive Vice President, Regulatory Policy and Programs, the Executive Vice President, Member Regulation or their respective designee(s) would be authorized to determine whether a vacancy created on the Committee needs to be filled. In some instances there may not be a need to fill a vacancy immediately – for example, when there is no scheduled meeting between the time of the vacancy and the next regularly scheduled election. If a determination is made to fill a vacancy or where a new position is created by an increase in Committee size, the Committee will fill such vacancy by a majority vote of a quorum present at a meeting as currently prescribed by Sections 8.4 (District Committee) and 8.11 (District Nominating Committee).

Section 8.5 (Meetings of District Committee) and Section 8.12 (Meetings of District Nominating Committees)

Coordinate Procedures for Meetings. Currently, Section 8.5 and Section 8.12 provide that each Committee will determine the time, place, and procedures for each meeting. To simplify and better coordinate Committee meetings across districts, the proposed amendments would authorize the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s), to determine the times, places and procedures for Committee meetings in

consultation with the Chair of each Committee. In addition, the proposed amendments clarify that an individual may attend a meeting either in person or by telephone and that action taken by telephonic vote will not require written confirmation.

Section 8.6 (Election of District Officers) and Section 8.13 (Election of District Nominating Committees)

Eliminate Requirement to Designate Function of Committee Officers. Currently Section 8.6 and Section 8.13 require that the Committees prescribe the powers and duties of its elected officers. The Committees have not found it necessary to perform this function. The proposed amendments will eliminate this requirement.

Section 8.7 (Advisory Council)

Members to Advisory Council. The proposed amendments will clarify that the Chair of the Market Regulation Committee of NASD is a member of the Advisory Council to the Board.

General Amendments to Allow Electronic Communications

Several Sections in Article VIII require parties to provide notice or other communications to Committee members or NASD. The proposed amendments provide that where provisions in Article VIII call for notice and other communications to be given either among Committee members, or between Committees and NASD staff, the requirement may be satisfied by electronic means provided the person entitled to notice consents to receive notice in this manner. Specifically, the proposed amendments would add new Section 8.33 which defines the term “Notice” as used in Article VIII to mean a notice in writing or by electronic transmission. In proposed Section 8.23, the Secretary of NASD may provide notice by electronic transmission to Executive Representatives of

NASD members announcing names of candidates, the offices for which they are nominated, and the procedures for contested elections, if the need arises. Additionally in proposed Section 8.24, NASD staff and District Offices would provide administrative support to all candidates by sending electronically up to two distributions prepared by the candidates to NASD members eligible to vote.

General Amendments to Centralize Procedures for Nominations and Elections

In general, the amendments would create a more streamlined and flexible election process, conform the By-Laws language with current practice, and allow the Secretary of NASD to play a more centralized role in the election process. For example, the proposed amendments will provide that the Secretary of NASD will perform many of the notification and other communication functions currently performed by other parties, such as notifying NASD members of upcoming elections, requesting submission of candidates, notifying NASD members of the candidates nominated by the District Nominating Committee, notifying NASD members in the event of a contested election, and notifying the Board of election results.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed change to Article VIII of the By-Laws of NASD Regulation, Inc. is designed to accomplish these ends by streamlining the procedures for

operation of the District Committees and District Nominating Committees. NASD believes the proposed change will streamline the nomination and election processes governing the Committees, modernize communication procedures, and improve the consistency among the Committees across all districts.

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

Not applicable.

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

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change has been filed by NASD as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act.⁴ Consequently, because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. In accordance with Rule 19b-4(f)(6)(iii), NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, and the proposed rule change will become operative 30 days after the date of the filing.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

⁴

17 CFR § 240.19b-4(f)(6).

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

Margaret H. McFarland
Deputy Secretary

Below is the text of the proposed rule change as reflected in SR-NASD-2003-55, redlined to indicate changes to the proposed rule language as described in this Amendment No. 1.

ARTICLE VIII

DISTRICT COMMITTEES AND DISTRICT NOMINATING COMMITTEES

Establishment of Districts

Sec. 8.1 The Board shall establish boundaries for districts within the United States to assist NASD in administering its affairs in a manner that is consistent with applicable law, the Restated Certificate of Incorporation, these By-Laws, the Delegation Plan, and NASD Rules. The Board may make changes from time to time in the number or boundaries of the districts as it deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new district configuration in the event of a change in the number or boundaries of the districts.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall consist of no fewer than five and no more than 20 members, unless otherwise provided by resolution of the Board. Subject to the limitation set forth in the immediately preceding sentence, the authorized number of members of a District Committee shall be determined from time to time by the Board; provided, however, that no decrease in the authorized number of members of a District Committee shall shorten the term of office of any member thereof. Each District

Committee member shall: (1) be employed by an NASD member eligible to vote in the district for District Committee elections, and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Committee. Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with NASD Rules. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor to educate NASD members and other brokers and dealers in their respective districts as to the objects, purposes, and work of NASD in order to foster NASD members' interest and cooperation.

(b) A member of a District Committee may resign at any time upon giving Notice to the District Director. Any such resignation shall take effect upon receipt of such Notice or at any later time specified therein, provided that notice of resignation at a later date may be made immediately effective at the discretion of the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s). The acceptance of such resignation shall not be necessary to make such resignation effective.

(c) In the event of the refusal, failure, neglect, or inability of a member of a District Committee to discharge his or her duties, or for any cause affecting the best interests of NASD, the sufficiency of which shall be decided by the District Committee, the District Committee may remove the member by the affirmative vote of two-thirds of the members of the District Committee then in office and declare the member's position vacant. The District Committee shall notify the District Committee member of his or her removal

within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified of the removal. The Board may affirm, reverse, or modify the determination of the District Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Committee.

(d) In the event of a vacancy in a District Committee resulting from death, resignation, removal, or other cause, the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) shall determine whether such vacancy shall be filled prior to the next regularly scheduled election of District Committee members. In the event the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines that a vacancy on a District Committee should be filled, the vacancy shall be filled pursuant to Section 8.4.

Term of Office of District Committee Members

Sec. 8.3 Each regularly elected member of a District Committee shall hold office for a "full term" which is the later of three years or until a successor is elected and qualified. Notwithstanding the term of office for a regularly elected member, such member's term shall terminate sooner upon the member's death, resignation, or removal. There is no limit on the number of terms that may be served by a member of a District Committee, provided, that no more than two terms may be served consecutively. The word "term" as used for the purpose of this Section shall mean either a full term for a regularly elected member or a "partial term" which is a term served by a member

appointed to fill a vacancy on the District Committee created by the termination of a regularly elected member's office prior to the expiration of the full term.

Filling of Vacancies on District Committees

Sec. 8.4 In the event of a vacancy on a District Committee prior to the expiration of the member's term of office, and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.2(d), that such vacancy should be filled, or in the event of a newly created membership on a District Committee by virtue of an increase in the authorized number of members thereof, the District Committee shall appoint by majority vote a representative of an NASD member eligible pursuant to Section 8.2(a) to fill the vacancy or newly created membership. The appointment by the District Committee shall be effective until the next regularly scheduled election, and until such member's successor is elected and qualified. Following the next regularly scheduled election, in the event of a vacancy, the newly elected Committee member shall serve only the duration of the departed Committee member's term, and in the event of a newly created membership, the newly elected Committee member shall serve only the duration of the term for such class of membership.

Meetings of District Committees

Sec. 8.5 Meetings of a District Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) in his or her discretion may determine in

consultation with the Chair of the District Committee. A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority present at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Any or all members of a District Committee may participate in any such meeting by means of conference telephone or other communications equipment by means of which all participants can communicate with each other, and such participation shall constitute presence in person at the meeting. Action by a District Committee may be taken by consent in writing or by electronic transmission in lieu of a meeting, in which case any action taken by a majority of the Committee shall constitute the action of the Committee.

Election of District Officers

Sec. 8.6 At or following its last regularly scheduled meeting of the calendar year, each District Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.

Advisory Council

Sec. 8.7 (a) The Chairs of the District Committees, elected pursuant to Section 8.6, together with the Chair of the Market Regulation Committee shall constitute an Advisory Council to the Board.

(b) The Advisory Council shall be advised of and entitled to attend such meetings of the Board as the Board may designate for such Advisory Council's attendance, and the Board shall designate at least one such meeting annually. The Advisory Council shall not be entitled to vote at meetings of the Board.

Expenses of District Committees

Sec. 8.8 Funds to meet the regular expenses of each District Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five members, unless the Board by resolution increases a District Nominating Committee to a larger number. Each District Nominating Committee member shall: (1) be employed by an NASD member eligible to vote in the district for District Committee elections, and (2) work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Nominating Committee, but shall not be a member of the District Committee. A majority of the members of the District Nominating Committee shall include persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the NASD Board.

(b) A member of a District Nominating Committee may resign at any time upon giving Notice to the District Director. Any such resignation shall take effect upon receipt of such Notice or at any later time specified therein, provided that notice of resignation at a later date may be made immediately effective at the discretion of the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s). The acceptance of such resignation shall not be necessary to make such resignation effective.

(c) In the event of the refusal, failure, neglect, or inability of a member of a District Nominating Committee to discharge his or her duties, or for any cause affecting the best interests of NASD, the sufficiency of which shall be decided by the District Nominating Committee, the District Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the District Nominating Committee then in office and declare the member's position vacant. The District Nominating Committee shall notify the District Nominating Committee member of his or her removal within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the District Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Nominating Committee.

(d) In the event of a vacancy in a District Nominating Committee resulting from death, resignation, removal, or other cause, the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) shall determine whether such vacancy shall be filled prior to the next regularly scheduled election of District Nominating Committee members. In the event the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines that a vacancy on a District Nominating Committee should be filled, the vacancy shall be filled pursuant to Section 8.11.

Term of Office of District Nominating Committee Members

Sec. 8.10 Each regularly elected member of a District Nominating Committee shall hold office for a "full term" which is the later of one year or until a successor is elected and qualified. Notwithstanding the term of office for a regularly elected member, such member's term shall terminate sooner upon the member's death, resignation, or removal. There is no limit on the number of terms that may be served by a member of a District Nominating Committee, provided, that no more than two terms may be served consecutively. The word "term" as used for the purpose of this Section shall mean either a full term for a regularly elected member or a "partial term" which is a term served by a member appointed to fill a vacancy on the District Nominating Committee created by the termination of a regularly elected member's office prior to the expiration of the full term.

Filling of Vacancies for District Nominating Committees

Sec. 8.11 In the event of a vacancy on a District Nominating Committee prior to the expiration of the member's term of office, and where the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) determines, pursuant to Section 8.9(d), that such vacancy should be filled, or in the event of a newly created membership on a District Nominating Committee by virtue of an increase in the authorized number of members thereof, the District Nominating Committee shall appoint by majority vote a representative of an NASD member eligible pursuant to Section 8.9(a) to fill the vacancy or newly created membership. The appointment shall be effective until the next regularly scheduled election pursuant to this Article, and until such member's successor is elected and qualified.

Meetings of District Nominating Committees

Sec. 8.12 Meetings of a District Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as the Executive Vice President, Regulatory Policy and Programs or the Executive Vice President, Member Regulation or their respective designee(s) in his or her discretion may determine in consultation with the Chair of the District Nominating Committee. A quorum of a District Nominating Committee shall consist of a majority of its members, and any action taken by a majority present at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the District Nominating Committee. Any or all members of a District Nominating Committee may participate in any such meeting by means of conference telephone or other communications equipment by means of which all participants can communicate with each other, and such participation shall constitute presence in person at the meeting. Action by a District Nominating Committee may be taken by consent in writing or by electronic transmission in lieu of a meeting, in which case any action taken by a majority of the District Nominating Committee shall constitute the action of the District Nominating Committee.[.]

Election of District Nominating Committee Officers

Sec. 8.13 Following the annual election of members of the District Nominating Committees pursuant to this Article, each District Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.

Expenses of District Nominating Committees

Sec. 8.14 Funds to meet the regular expenses of each District Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to District Nominating Committee

Sec. 8.15 On or before June 1 of each year, the Secretary of NASD shall give a Notice to each District Nominating Committee member and each District Director identifying the members of the District Nominating Committee and the District Committee whose terms of office shall expire in the next calendar year. The Notice shall describe election procedures for filling the offices.

Solicitation of Candidates and Secretary's Notice to NASD Members

Sec. 8.16 The Secretary of NASD shall give a Notice of the upcoming election to NASD members and the Executive Representatives of NASD members describing the election procedures and stating that NASD members may submit names of candidates for consideration to the District Director. NASD staff shall provide the District Nominating Committee with a description of the NASD membership in the district. The District

Nominating Committee shall identify and solicit candidates to nominate for election to the District Committee and the District Nominating Committee.

District Nominating Committee Slate

Sec. 8.17 (a) The District Nominating Committee shall review the background of proposed candidates and the description of the NASD membership provided by NASD staff and shall nominate a slate of candidates for the election. The slate shall include one candidate for each position on the District Committee and the District Nominating Committee subject to election at the next annual election. In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and various classes and types of NASD members engaged in the investment banking or securities business within the district. In nominating candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

(b) A District Nominating Committee shall not nominate an incumbent member of the District Committee to succeed himself or herself on the District Committee unless the incumbent member of the District Committee is serving pursuant to the provisions of Section 8.4 or is serving a term pursuant to the provisions of Section 8.2 and reelection would not cause the incumbent member to violate the provisions of Section 8.3. A

District Nominating Committee may not nominate more than two incumbent members of the District Nominating Committee to succeed themselves.

Notification of Nomination

Sec. 8.18 The District Director, acting on behalf of the District Nominating Committee, shall give a Notice to the Secretary of NASD of each candidate nominated by the District Nominating Committee and the office to which the candidate is nominated. On or before October 1 of each year, the Secretary of NASD shall give a Notice of the nominated candidates to the Executive Representatives of NASD members and the District Committee.

Uncontested Election

Sec. 8.19 If the District Nominating Committee nominates one candidate for each position on the District Committee and the District Nominating Committee subject to election at the next annual election and no additional candidate is nominated pursuant to Section 8.22, the candidates nominated by the District Nominating Committee shall be considered duly elected.

Designation of Additional Candidates

Sec. 8.20 If an officer, director, or employee of an NASD member who meets the qualifications of Section[s] 8.2 or 8.9, as applicable, is not nominated by the District Nominating Committee and wants to be considered for election to the District Committee or the District Nominating Committee, he or she shall deliver a written notice to the District Director within 14 calendar days after the Secretary of NASD gives the Notice of nominated candidates pursuant to Section 8.18. The District Director shall make a

written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an "additional candidate."

List of NASD Members Eligible to Vote

Sec. 8.21 (a) The Secretary of NASD shall provide a list of all NASD members eligible to vote in the district, their mailing addresses, and their Executive Representatives to the additional candidate promptly following receipt of the additional candidate's timely notice by the District Director.

(b) An NASD member that has its principal office and/or one or more registered branch offices in the district shall be eligible to cast one vote through the NASD member's Executive Representative for each position on the District Committee and the District Nominating Committee to be filled in the election.

Requirement for Petition Supporting Additional Candidate

Sec. 8.22 An additional candidate shall be nominated if a petition signed by at least ten percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the date of the mailing of the list to the additional candidate pursuant to Section 8.21. Only an Executive Representative may sign a petition on behalf of an NASD member.

Notice of Contested Election

Sec. 8.23 If an additional candidate is nominated pursuant to Section 8.22, the election shall be considered a contested election. The Secretary of NASD shall give a Notice to the Executive Representatives of NASD members eligible to vote in the district

announcing the names of the candidates and the office to which each candidate is nominated and describing contested election procedures.

Administrative Support

Sec. 8.24 The District Office shall provide administrative support to all candidates by sending, by electronic transmission, to NASD members eligible to vote in the district up to two distributions of materials prepared by the candidates. If a candidate wants such distributions sent, the candidate shall prepare such material on the candidate's personal stationery and make the material available to NASD in electronic format. The material shall state that it represents the opinion of the candidate. Candidates nominated by the District Nominating Committee may identify themselves as such in their materials. Any candidate also may send mailings at the candidate's own expense. Except as provided in this Article, NASD, the Board, the Regional Nominating Committee, any other committee, and NASD staff shall not provide any other administrative support to a candidate in the election.

Ballots

Sec. 8.25 With the assistance of the Secretary of NASD and an Independent Agent, the District Nominating Committee shall prepare a ballot with the names of the District Nominating Committee's candidates and any additional candidate nominated pursuant to Section 8.22 and the office to which each candidate is nominated. The ballot shall list separately, in alphabetical order, the candidates nominated by the District Nominating Committee and the additional candidates nominated pursuant to Section 8.22. The Secretary of NASD shall send a ballot to the Executive Representative of each NASD

member eligible to vote in the district. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be no fewer than 20 and no more than 30 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 8.26 Eligibility to vote in a district election shall be based on NASD's membership records as of a date selected by the Secretary of NASD that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD shall prepare a list of NASD members eligible to vote in the district, their mailing addresses, and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned as Undelivered

Sec. 8.27 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 8.28 After the voting period, on a date or dates designated by the Secretary of NASD, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 8.25. Candidates and their representatives shall be allowed to

observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to a location within the district agreed to between the Independent Agent and the Secretary of NASD all ballots timely received. Under the direction of the Secretary of NASD or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the district and their Executive Representatives as prepared by the Secretary of NASD pursuant to Section 8.26. The Secretary of NASD or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 8.29 The Independent Agent shall set aside a ballot if: (a) the ballot is received from an NASD member eligible to vote in the district and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 8.26, and the Secretary of NASD has not received proper notice of a change in Executive Representative pursuant to NASD By-Laws; or (b) if two or more properly executed ballots are received from an NASD member eligible to vote in the

district. If the Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of NASD and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD shall contact the NASD member to request that the NASD member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.30 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exist:

- (a) the ballot is not signed by the Executive Representative (unless Section 8.29 applies);
- (b) a vote is not indicated on the ballot; or
- (c) the ballot indicates votes for more candidates than there are positions on the District Committee or District Nominating Committee subject to election in the election.

Election Results

Sec. 8.31 Under the direction of the Secretary of NASD or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee or District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of positions on the District Committee or District Nominating Committee subject to election in the election. In the event of a tie, there shall be a run-off election. The Secretary of NASD shall notify the Board of the election results. The notification shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.32 The Secretary of NASD may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD, with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Definitions

Sec. 8.33 (a) When used in Article VIII of these By-Laws, the term "Notice" means a notice in writing or by electronic transmission and the term "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed

by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) For purposes of this Article VIII, any notice by NASD, the Secretary of NASD, or the District Director given by electronic transmission shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the person entitled to notice has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the person entitled to notice has consented to receive notice; (3) if by a posting on an electronic network when the person entitled to notice has consented to receive notice in this manner, together with separate notice to the person entitled to notice of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission when the person entitled to notice has consented to receive notice in this manner, when directed to the person entitled to notice. For purposes of this Article VIII, if mailed, any such notice by NASD, the Secretary of NASD, or the District Director shall be deemed given when deposited in the United States mail, postage prepaid, directed to the person entitled to notice at such person's address as it appears on the records of NASD.