

SPECIAL NASD NOTICE TO MEMBERS 96-35

Mail Vote—NASD Solicits Member Vote On Amendments To The NASD By-Laws To Make By-Laws Consistent With The “Plan Of Allocation And Delegation Of Functions By NASD To Subsidiaries”; Last Voting Date: June 22, 1996

Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

Executive Summary

The National Association of Securities Dealers, Inc. (NASD[®]) invites members to vote to approve amendments to the NASD By-Laws that continue the restructuring necessary to implement the principles articulated in the September 1995 Report of the Select Committee on Structure and Governance (Select Committee) and make the By-Laws consistent with the “Plan of Allocation and Delegation of Functions by NASD to Subsidiaries” (Delegation Plan). **The last voting date is June 22, 1996.**

The text of the proposed amendments follows this Notice.

Questions about this Notice may be directed to Phillip A. Rosen, Associate General Counsel, NASD, at (202) 728-8446.

Background

The proposed amendments to the NASD By-Laws will permit the NASD to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee. In January 1996, the NASD created a new subsidiary, NASD Regulation, Inc. (NASD Regulation) to provide regulation and member and constituent services, with the NASD retaining responsibility for general oversight over the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries, The Nasdaq Stock Market, Inc. (Nasdaq[®]) and NASD Regulation, and final policymaking authority for the Association as a whole.

The NASD also adopted Select Committee proposals to restructure and reduce the size of the NASD Board and to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards. In *Notice to Members 95-101* (December 11, 1995), members were

asked to vote on By-Law changes to implement these policies. Following member approval of the proposed By-Law changes, the Securities and Exchange Commission (SEC), on April 11, 1996, granted temporary approval, for a period of 90 days, to the proposed restructuring of the NASD Board and to a new NASD rule providing for the delegation of the authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the Delegation Plan. A copy of the Delegation Plan is attached to this Notice as Exhibit 1. The Delegation Plan is the blueprint for the coordinated efforts of NASD, NASD Regulation, and Nasdaq, and sets forth the purposes, functions, and governance procedures of the three corporations working together.

Briefly, the changes to the By-Laws will:

- Delete sections and language now unnecessary or inappropriate as a result of the Delegation Plan, including nearly all references to the Districts and local administration, since responsibility for the local administration of regulatory affairs under the Delegation Plan has been assigned to NASD Regulation. In recognition of this responsibility, the Board of Directors of NASD Regulation adopted a resolution at its May 13, 1996, meeting to appoint the Districts and District Committees as Districts and District Committees of NASD Regulation.

- Conform terms and rule citations to those used in the reorganized *NASD Manual*, including, for example, replacing the term “Code of Procedure” with “Procedural Rules.”¹

¹ The reorganized *NASD Manual* is divided into four sections (Administrative, Corporate Organization, Rules of the Association, and SEC Rules and Regulation T) and includes an expanded key word index. See, *Notice to Members 96-25* (April 1996).

• Make various clarifying corrections to the By-Laws.

Proposed Amendments To The By-Laws

Article I. Definitions

Introduces three new definitions. “Delegation Plan” is the term by which the “Plan of Allocation and Delegation of Functions by NASD to Subsidiaries” will be known. “Corporations” and “Boards” are the terms that will refer to the NASD and its subsidiaries.

Revises the definition of “Act” to match the definition in the Delegation Plan, and the definition of “rules of the Corporation” to include the various references to rules in the reorganized *NASD Manual*.

Article II. Qualifications of Members and Associated Persons

Sec. 1. Persons Eligible to Become Members and Associated Persons of Members

No change.

Sec. 2. Authority of Board to Adopt Qualification Requirements

(c) Deletes the second sentence, which is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII).

Sec. 3. Ineligibility of Certain Persons for Membership or Association

(d) Replaces “Code of Procedure” with the more general term “Procedural Rules,” as used in the reorganized *NASD Manual*.

Sec. 4. Definition of Disqualification

No change.

Article III. Membership

Sec. 1. Application for Membership

(a)(3) In a change made necessary by the Delegation Plan, the proposed revision extends to the Nasdaq and NASD Regulation Boards, committee members, officers, and employees protection from liability for action taken within the scope of authority, except for willful malfeasance. See also Article IV, Sec. 2(a)(2) of the By-Laws.

(a)(4) Replaces “Board of Governors” with “Corporation,” since it is the corporate staff that requests information and processes applications for membership.

(b) Harmonizes the By-Laws with the reorganized *NASD Manual*, which moved membership application procedures to the Procedural Rules; deletes references to Districts; and adds language requiring that applications be processed in the manner set forth in the Procedural Rules.

(c) Deleted, as part of the general deletion of references to Districts.

Sec. 2. Similarity of Membership Names

No change.

Sec. 3. Executive Representative

No change.

Sec. 4. Membership Roll

No change.

Sec. 5. Resignation of Members

Replaces “Code of Procedure” with “Procedural Rules.”

Sec. 6. Retention of Jurisdiction

Replaces “Code of Procedure” with “Procedural Rules.”

Sec. 7. Transfer and Termination of Membership

(a) Replaces “Rules of Fair Practice” with “rules of the Corporation.”

Sec. 8. Registration of Branch Offices

(a) Corrects the cross reference to Article VI, in light of the prior deletion of Article V, Affiliates, in the vote requested in *Notice to Members 95-101* (December 11, 1995).

Sec. 9. Vote of Branch Offices

Deleted, as part of the general deletion of references to Districts.

Sec. 10. District Committees’ Right to Classify Branches

Deleted, as part of the general deletion of references to Districts.

Article IV. Registered Representatives and Associated Persons

Sec. 1. Qualification Requirements

No change.

Sec. 2. Application for Registration

(a)(2) As in Article III, Sec. 1(a)(3), in a change made necessary by the Delegation Plan, the proposed revisions extend to the Nasdaq and NASD Regulation Boards, committee members, officers, and employees protection from liability for action taken within the scope of authority, except for willful malfeasance. See also Article IV, Sec. 2(a)(2) of the By-Laws.

Sec. 3. Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification

(a) Replaces “Code of Procedure” with “rules of the Corporation.”

Sec. 4. Retention of Jurisdiction

Replaces “Code of Procedure” with “rules of the Corporation.”

Article VI. Dues, Assessments and Other Charges

Becomes Article V; renumbered following deletion of former Article V, Affiliates.

Sec. 1. Power of Corporation to Fix and Levy Assessments

For purposes of consistency, replaces references to the "Board of Governors" with "Corporation" in the section heading and text, and deletes language that is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII).

Sec. 2. Reports of Members

No change.

Sec. 3. Suspension or Cancellation of Membership or Registration

No change.

Sec. 4. Reinstatement of Membership or Registration

No change.

Article VII. Board of Governors
Becomes Article VI.

Sec. 1. Powers and Authority of Board of Governors

(a)(2) and (3) In conjunction with the reorganization of the *NASD Manual*, replaces "Rules of Fair Practice" with the more general reference to "rules of the Corporation."

(c) In conjunction with the implementation of the Delegation Plan, this new subsection sets forth the authority of the Corporation to delegate functions, provided that such delegations are not inconsistent with the Delegation Plan.

Sec. 2. Authority to Suspend for Failure to Submit Required Information

No change.

Sec. 3. Authority to Take Action Under Emergency or Extraordinary Market Conditions

Expands the power of the Board to delegate to any person the authority to take emergency action. Such action must be consistent with requirements of new Sec. 1(c) of this article, described above.

Sec. 4. Composition and Qualifications of the Board

The proposed amendments reorganize this section into two subsections, incorporating from Article X, Sec. 1 the election by the Board of Governors of a Chairman and such other persons having titles as it may choose. The amendments retain the new organization of the Board as a majority Non-industry Board but delete the definitions of Industry and Non-industry, since those terms, and a definition of Public Governor, are now contained at Section I.A. of the Delegation Plan, which definitions also apply to the Directors of Nasdaq and NASD Regulation. See also Section I.C. of the Delegation Plan, which contains provisions applicable to the composition, nomination, and election of Governors. As revised, this section requires that the Board of Governors be composed in a manner consistent with the Delegation Plan and Section 15A(b)(4) of the Securities Exchange Act of 1934. This will ensure that the Board will at all times include full representation of issuers, investors, and the securities industry, with a Non-industry majority.

Sec. 5. Term of Office of Governors

Clarifies that, except for the Chief Executive Officer, no Governor may serve more than two consecutive three-year terms; with the limited exception that a Governor appointed to fill a term of less than one year may serve up to two consecutive terms following the expiration of that Governor's current term.

Sec. 6. Filling of Vacancies

No change.

Sec. 7. Election of Board Members

The Board, after consideration of comments received in connection with the member vote on the By-Law changes proposed in *Notice to Members 95-101* and in consultation with the SEC, determined to reestablish a role for the members in the nomination and election of Governors

(and including Non-industry and Public Governors), and the proposed changes amend this section to provide such a role. In conjunction with this section of the By-Laws, Section I.C. of the Delegation Plan describes the procedures for the nomination and election of NASD Governors.

Sec. 8. Meetings of Board; Quorum; Required Vote

No change.

Sec. 9. Action by Written Consent of Governors

Deleted, since this authority is already provided by operation of Delaware General Corporation Law.

Article VIII. District Committees and Article IX. Nominating Committees

These two articles are entirely deleted, as part of the general deletion of references to Districts. As noted above, the local administration of regulatory affairs under the Delegation Plan is now the responsibility of NASD Regulation, and the NASD Regulation Board has appointed the Districts and District Committees as that corporation's mechanisms for local administration.

Article X. Officers

Becomes Article VII. The word "Employees" has been deleted from the article title, since this article concerns officers of the Corporation, not employees.

Sec. 1. Election of Officers of the Board

Moved to Article VI, Sec. 4(b).

Sec. 2. Officers of the Corporation

Becomes Sec. 1. and specifies that the powers and duties assigned to the Chief Executive Officer of the Corporation may not be inconsistent with the requirements of the Delegation Plan, and therefore deletes the Chief Executive Officer's ex-officio membership in all committees.

Sec. 3. Absence of Chief Executive Officer

Becomes Sec. 2.

Sec. 4. Employment of Counsel

Becomes Sec. 3.

Sec. 5. Administrative Staff

Becomes Sec. 4 and clarifies that determination of the NASD Board in employment of administrative staff shall not be inconsistent with the Delegation Plan.

Sec. 6. Compensation of Board and Committee Members

Becomes Sec. 5 and deletes reference to District Committees.

Article XI. Committees

Becomes Article VIII.

Sec. 1. National Committees

This section subtitle is deleted as unnecessary in light of the deletion of Sec. 2. Clarifies that the determination of the Board in the establishment of committees shall not be inconsistent with the Delegation Plan.

Sec. 2. Committees of the Districts

Deleted, as part of the general deletion of references to Districts.

Sec. 3. Removal of Committee Member

Becomes Sec. 2, changes the reference to Article XI to Article VIII, and deletes references to District Committees.

Sec. 4. Executive Committee

Deleted, since the authority to create such a committee exists by operation of Delaware General Corporation Law and Sec. 1 of this Article.

Article XII. Rules of Fair Practice

Becomes Article IX and is renamed "Conduct Rules" to conform to usage in the reorganized *NASD Manual*, and deletes "Sec. 1," since there is only one section.

Article XIII. Disciplinary Proceedings

Becomes Article X.

Sec. 1.

Deletes language that is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII).

Sec. 2.

No change.

Article XIV. Powers of Board to Prescribe Sanctions

Becomes Article XI.

Sec. 1.

(c) Changes "Code" to "Arbitration Code" to clarify the references to this code.

(e) Deletes references to committees that are now committees of NASD Regulation.

Article XV. Uniform Practice Code

Becomes Article XII.

Sec. 1. Authority to Adopt Code

Deletes the last sentence of the section, which is redundant to Sec. 1(a)(2) of Article VI (formerly Article VII).

Sec. 2. Administration of Code

Clarifies the reference to the Uniform Practice Code in the last sentence.

Sec. 3. Transactions Subject to Code

Clarifies the reference to the Uniform Practice Code.

Article XVI. Limitation of Powers

Becomes Article XIII.

Sec. 1. Prohibitions

No change.

Sec. 2. Use of Name of Corporation by Members

No change.

Sec. 3. Unauthorized Expenditures

Deletes reference to District Committees and replaces "President" with "Chief Executive Officer."

Sec. 4. Conflicts of Interest

Harmonizes this section with the language of the Procedural Rules in the reorganized *NASD Manual*.

Sec. 5. Municipal Securities

No change.

Sec. 6. Government Securities

No change.

Article XVII. Procedure for Adopting Amendments to By-Laws

Becomes Article XIV. Deletes "Sec. 1," since there is only one section.

Article XVIII. Corporate Seal

Becomes Article XV. Deletes "Sec. 1," since there is only one section.

Article XIX. Checks

Becomes Article XVI. Deletes "Sec. 1," since there is only one section.

Article XX. Annual Financial Statement

Becomes Article XVII. Deletes "Sec. 1," since there is only one section.

Request For Vote

The NASD Board of Governors believes the proposed amendments will facilitate implementation of the Select Committee's recommendations. Please mark the attached ballot according to your convictions and mail it in the enclosed, stamped envelope to The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.
Ballots must be postmarked no later than June 22, 1996.

BY-LAWS
OF
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.¹

ARTICLE I

Definitions

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

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

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

(c) "Board" means the Board of Governors of the Corporation;

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

(e) "branch office" means an office defined as a branch office in NASD Rule 3010;

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

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

¹ The rule language herein treats as if adopted the amendments published for member vote in Notices to Members 95-101 (December 11, 1995) and 96-01 (January 1996).

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

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

[(j)](h) "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization or other legal entity engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business;

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

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

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

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

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

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

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

[(o)](r) "municipal securities broker" means a broker, except a bank or department or division of a bank, engaged in the business of effecting transactions in municipal securities for the account of others;

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

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

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

[(s)](v) "rules of the Corporation" means all rules of the Corporation [including the](which rules may be referred to as "Association Rules," "NASD Rules," or "Rules of the Association"), including the Restated Certificate of Incorporation, By-Laws, [Rules of Fair Practice, Government Securities Rules, Code of Procedure,] Procedural Rules, Uniform Practice Code, any other rules, and any interpretations thereunder.

ARTICLE II

Qualifications of Members and Associated Persons

Persons Eligible to Become Members and Associated Persons of Members

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

(b) Any person shall be eligible to become an associated person of a member, except such persons who are excluded under the provisions of Section 3(b) of this Article.

Authority of Board to Adopt Qualification Requirements

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

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

(c) The Board of Governors may from time to time make changes in such rules, regulations and standards as it deems necessary or appropriate. [Neither the adoption nor any change in such standards need be submitted to the membership for approval and such rules, regulations and standards as adopted or amended shall become effective at such a time as the Board of Governors may prescribe.]

Ineligibility of Certain Persons for Membership or Association

Sec. 3. (a) No registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities broker or dealer or government securities broker or dealer, or member fails or ceases to satisfy the qualification requirements under Section 2 of this Article, if applicable, or if such broker, dealer, municipal securities broker or dealer or government securities broker or dealer, member is or becomes subject to a disqualification under Section 4 of this Article or if such member fails to comply with the requirement that all forms filed pursuant to these By-Laws be filed via electronic process or such other process the Corporation may prescribe.

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

(c) If it deems appropriate, the Board of Governors, upon notice and opportunity for a hearing, may cancel the membership of a member if it becomes ineligible for continuance in membership under subsection (a) hereof, may suspend or bar a person for continuing to be associated with any member if such person is or becomes ineligible for association under subsection (b) hereof, and may cancel the membership of any member who continues to be associated with any such ineligible person.

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

(1) conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification may include the proposed or present business of an applicant for membership or of a member and the conditions of association of any prospective or presently associated person, among other matters;

(2) permit, in limited types of situations, a membership or association with a member pending completion of its inquiry or investigation, and its final determination, based upon a consideration of relevant factors, and may classify situations taking into account the status of brokers, dealers, municipal securities brokers and dealers and government securities brokers and dealers as applicants or existing members and of persons as prospective or presently associated persons or members; the type of disqualification or failure to qualify; whether a member or associated person has been the subject of a previous approval and the terms and conditions thereof; and any other relevant factors; and

(3) delegate any of its functions and authority under this subsection (d) to appropriate committees of the Corporation or to Corporation staff members.

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

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

Definition of Disqualification

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

(a) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to Section 5 of the Commodity Exchange Act, or foreign equivalent of a contract market designated pursuant to any substantially equivalent foreign statute regulation, or futures association registered under Section 7 of the Commodity Exchange Act or a foreign equivalent of a futures association designated pursuant to any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(b) is subject to --

(1) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority:

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

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

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

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

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

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

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

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

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

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

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the above, or any entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation;

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

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

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

(h) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security[.];

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

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

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

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

ARTICLE III

Membership

Application for Membership

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

(1) an acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions, and covenants of the Restated Certificate of Incorporation, the By-Laws, the rules and regulations of the Corporation as they are or may from time to time be adopted, changed or amended, and all rulings, orders, directions and decisions of, and sanctions imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;

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

(3) an agreement that [neither] none of the [Corporation, nor] Corporations, or any officer [or], employee [thereof, nor any], or member of the [Board of Governors or of any district or other committee] Boards or committees of the Corporations, shall be liable, except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer or member of the [Board of Governors] Boards or of any [district or other] committee, in his official capacity, or by any employee of the [Corporation] Corporations while acting within the scope of his employment or under instruction of any officer, [board] Board, or committee of the [Corporation] Corporations, in connection with the administration or enforcement of any of the provisions of the rules of the Corporation as they are or may from time to time be adopted, or amended, or any ruling, order, directive, decision of, or penalty imposed by, the [Board of Governors] Boards or any duly authorized committee[, thereof, or the provisions of the federal securities laws, including the rules and regulations adopted thereunder, [including] and the rules of the Municipal Securities Rulemaking Board and the Treasury Department; and

(4) such other reasonable information with respect to the applicant as the [Board of Governors] Corporation may require.

(b) Any application for membership received by the Corporation shall be [referred to the District Committee of the District in which the applicant has his principal place of business, and if such District Committee or a Subcommittee designated by such District Committee determines

that the applicant has satisfied all of the admission requirements of the Corporation, it shall promptly notify the Association's Membership Department of its determination.] processed in the manner set forth in the Procedural Rules of the Corporation.

[(c) If such District Committee or a Subcommittee designated by such District Committee determines that the applicant fails to satisfy all of the admission requirements of the Corporation, it shall promptly notify the Association's Membership Department of its determination.]

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

Similarity of Membership Names

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

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

Executive Representative

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

Membership Roll

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

Resignation of Members

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

Retention of Jurisdiction

Sec. 6. A resigned member or a member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the [Code of Procedure] Procedural Rules based upon conduct which commenced prior to the effective date of the member's resignation from the Corporation or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two (2) years after the effective date of resignation, cancellation or revocation.

Transfer and Termination of Membership

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

(b) The consolidation, reorganization, merger, change of name, or similar change in any corporate member shall not terminate the membership of such corporate member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the corporate member, and the member or the surviving organization shall continue in the investment banking and securities business, and shall possess the qualifications for membership in the Corporation. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation or any change in the legal structure of a partnership member shall not terminate the membership of such partnership member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the partnership member, and the member or surviving organization shall continue in the investment banking and securities business and shall possess the qualifications for membership in the Corporation. If the business of any predecessor member is to be carried on by an organization deemed to be a successor organization by the Corporation, the membership of such predecessor

member shall be extended to the successor organization; otherwise, any surviving organization shall be required to satisfy all of the requirements of the By-Laws.

Registration of Branch Offices

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

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

[Vote of Branch Offices]

[Sec. 9. Each member of the Corporation having a registered branch office shall be entitled to one vote on all matters pertaining solely to the district in which such registered branch office is located (including the election of members to the Board of Governors from such district); provided, however, that if any member of the Corporation shall have more than one registered branch office in a district, or its principal office and one or more registered branch offices in a district, such member shall be entitled to only one vote in such district.]

[District Committees' Right to Classify Branches]

[Sec. 10. A District Committee may classify any branch of a member not meeting the definition of Article I(d) of the By-Laws as a "branch Office" if such Committee is satisfied that the definition of Article I(d) of the By-Laws is substantially met and that the business of said branch in the district is of sufficient importance to justify such a classification.]

ARTICLE IV

Registered Representatives and Associated Persons

Qualification Requirements

Sec. 1. No member shall permit any person associated with such member to engage in the investment banking or securities business unless the member determines that such person has complied with the applicable provisions under Article II of the By-Laws.

Application for Registration

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

(1) an acceptance of and an agreement to comply with the all the provisions of the rules of the Corporation as they are or may from time to time be adopted or amended, all rulings, orders, directions and decisions of, and penalties imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, [including] and the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;

(2) an agreement that [neither] none of the [Corporation, nor] Corporations, or any officer [or], employee [thereof, nor any], or member of the [Board of Governors or of any district or other Committee] Boards or committees of the Corporations, shall be liable except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer, member of the [Board of Governors] Boards or of any [District or other Committee] committee in his official capacity, or by any employee of the Corporation while acting within the scope of his employment, or under instruction of any officer, [board] Board, or committee of the [Corporation] Corporations, in connection with the administration or enforcement of any of the provisions of the By-Laws, any rules of the Corporation as they are or may from time to time be adopted or amended, any ruling, order, direction, decision of, or penalty imposed by the [Board of Governors] Boards or any duly authorized committee thereof, the provisions of the federal securities laws, including the rules and regulations adopted thereunder including the rules of the Municipal Securities Rulemaking Board and the rules of the Treasury Department; and

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

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

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

Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification

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

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

Retention of Jurisdiction

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

(a) two (2) years after the effective date of termination of registration pursuant to Section 3 above, provided, however that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule or regulation shall operate to recommence the running of the two-year period under this paragraph;

(b) two (2) years after the effective date of revocation of registration pursuant to NASD Rule 8210; or[,]

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

ARTICLE [VI] V

Dues, Assessments and Other Charges

Power of [Board] Corporation to Fix and Levy Assessments

Sec. 1. The [Board of Governors] Corporation shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the Corporation each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments and other charges to be paid by members of the Corporation and issuers and any other persons using any facility or system which the Corporation operates or controls. Fees, dues, assessments and other charges shall be called and payable as determined by the [Board of Governors] Corporation from time to time; provided, however, that such admission fees, dues, assessments and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the Corporation operates or controls. The [Board of Governors] Corporation may from time to time make such changes or adjustments in such fees, dues, assessments and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. [Neither the adoption nor any change in such fees, dues, assessments and other charges need be submitted to the membership for approval and such fees, dues, assessments and other charges as adopted or amended shall become effective at such time as the Board of Governors may prescribe.] In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the [Board of Governors] Corporation may make such adjustment in the fees, dues, assessments or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Sec. 2. Reports of Members

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

Sec. 3. Suspension or Cancellation of Membership or Registration

The Corporation after fifteen (15) days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments or other charges or for failure to furnish any information or reports

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

Reinstatement of Membership or Registration

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

ARTICLE [VII] VI

Board of Governors

Powers and Authority of Board of Governors

Sec. 1. (a) The Board of Governors shall be the governing body of the Corporation and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation[,] or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the Corporation and the promotion of the Corporation's welfare, objects and purposes. In the exercise of such powers, the Board of Governors, shall have the authority to:

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

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

(3) make such regulations, issue such orders, resolutions, interpretations, including interpretations of the [Rules] rules of [Fair Practice] the Corporation, and directions, and make such decisions as it deems necessary or appropriate;

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

(5) establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof;

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

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

(8) require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered by the Corporation, a division or subsidiary thereof, or a clearing agency registered under the Act; and

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

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

(c) To the fullest extent permitted by the Restated Certificate of Incorporation and applicable law, the Corporation may delegate any power of the Corporation or the Board of Governors to any person or entity, including a subsidiary of the Corporation; provided that such delegation is not inconsistent with the Delegation Plan.

Authority to Suspend for Failure to Submit Required Information

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

(b) The Board of Governors is authorized to delegate the authority hereinabove granted to the Chief Executive Officer of the Corporation; provided, however, that the Executive

Committee of the Board of Governors shall be notified in writing of any such contemplated action by the Chief Executive Officer.

Authority to Take Action Under Emergency or Extraordinary Market Conditions

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

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

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

Composition and Qualifications of the Board

Sec. 4. (a) [The management and administration of the affairs of the Corporation shall be vested in a Board of Governors. Governors shall be elected by the Board in accordance with the provisions of Section 7 of this Article. A person shall be qualified to serve on the Board if such person is: (1) the Chief Executive Officer of the Corporation; (2) associated with a member of the Corporation (an "Industry Governor"); or (3) satisfies the criteria adopted from time to time by the Board (a "Non-Industry Governor").] The Board of Governors shall be composed of five or more members, the number thereof to be determined from time to time by the Board of Governors, and shall include at all times the Chief Executive Officer and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Governors, both of which determinations shall be consistent with the Delegation Plan and Section 15A(b)(4) of the Act. The criteria for the categories of Industry, Non-Industry and Public Governors, as used herein, shall be established by the Board of Governors from time to time, which criteria shall be consistent with the Delegation Plan.

(b) [The Board of Governors shall consist of five or more members, the number thereof to be determined from time to time by the Board of Governors, and shall include at all times: (1) the Chief Executive Officer; (2) one or more Non-Industry Governors representative of issuers and investors and not associated with a member of the Corporation; (3) one or more Industry Governors; and (4) a majority of Non-Industry Governors, unless (A) there shall be a vacancy in the position of a Non-Industry Governor, in which case such vacancy shall be filled by a person satisfying the criteria for a Non-Industry Governor in accordance with the provisions of Section

6 of this Article or (B) a Governor elected as Non-Industry Governor becomes an Industry Governor and his remaining term of office is six months or less. If a Governor elected as a Non-Industry Governor becomes an Industry Governor and his remaining term of office is more than six months, or a Governor elected as an Industry Governor becomes a Non-Industry Governor and his remaining term of office is more than six months, he shall be automatically removed from office unless the Board determines otherwise.] As soon as practicable, following the annual election of members to the Board of Governors, the Board of Governors shall elect from the members of the Board of Governors a Chairman, and such other persons having such titles as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board of Governors. The Board of Governors, by affirmative vote of a majority of its members, may remove any such person from such position at any time.

Term of Office of Governors

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

Filling of Vacancies

Sec. 6. (a) Any vacancy in the office of a Governor, whether occurring by reason of death, disability, disqualification, removal, or resignation, other than a vacancy occurring by reason of an increase in the size of the Board, shall be filled by majority vote of the remaining Governors then in office[,] and any person elected to fill such vacancy shall satisfy the qualifications and criteria for the governorship being filled as provided in Section 4 of this Article.

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

Election of Board Members

Sec. 7. [The Governors elected by the Board under Section 4 of this Article shall be nominated by the Nominating Committee as provided in this Section 7.]

[The Nominating Committee]

(a) [The Nominating Committee shall consist of seven or more persons, the number thereof to be determined from time to time by resolution of the Board of Governors. Members of the Nominating Committee shall be elected by the Board from time to time. The Nominating Committee shall consist of: (1) the Chief Executive Officer of the Corporation; (2) at least three persons associated with members of the Corporation ("Industry Members"); and (3) a number on non-industry representatives who satisfy the criteria adopted from time to time by the Board equal in amount to the number of Industry Members serving on the Nominating Committee. Members of the Nominating Committee need not be Governors. Members of the Nominating Committee may be removed, with or without cause, by vote of a majority of the members of the Board of Governors.] The members of the Board of Governors shall be elected by a plurality of the votes of the members of the Corporation present in person or represented by proxy at the annual meeting of the Corporation and entitled to vote thereat. The annual meeting of the Corporation shall be on such date and at such place as the Board of Governors shall designate. Any Governor so elected must be nominated by the National Nominating Committee described in subsection (b) below and must satisfy the other qualifications for Governors set forth in Section 4 of this Article or as established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the Delegation Plan.

The National Nominating Committee

(b) The National Nominating Committee shall have such powers and shall perform such functions as shall be determined by resolution of the Board of Governors from time to time, consistent with the Delegation Plan. The National Nominating Committee shall consist of six or more persons who shall have such qualifications, and who shall be selected in such manner, as shall be determined by resolution of the Board of Governors from time to time, which qualifications and manner of selection shall be consistent with the Delegation Plan.

Procedure for Nomination of Governors

(c) At least 90 days prior to a meeting of members for the election of Governors, the Corporation shall notify the members of the date, place and time of such meeting and shall set forth in such notice the names of each nominee (a "Nominee"), as selected by the National Nominating Committee, [The Nominating Committee shall propose a nominee] for each governorship up for election [(a "Nominee")], and shall further provide in such notice the [name,] qualifications and such other information regarding each such Nominee as the National Nominating Committee deems pertinent. [The Nominating Committee may also propose nominees

for boards of directors of any wholly owned subsidiary of the Corporation.] A person who has not been so nominated may be included on the ballot for the election of Governors if (1) at least 60 days prior to the scheduled date for the meeting of members, such person complies with the requirements and procedures for nomination set forth in the Delegation Plan and (2) the person is certified by the National Nominating Committee as meeting the applicable qualifications for Governorship.

Meetings of Board; Quorum; Required Vote

Sec. 8. Meetings of the Board of Governors shall be held at such times and places, upon such notice, and in accordance with such procedure as the Board of Governors in its discretion may determine. A quorum of the Board of Governors shall consist of a majority of the total number of Governors of the Corporation, and any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in the Restated Certificate of Incorporation or these By-Laws, shall constitute the action of the Board. Members of the Board of Governors, or any committee designated by the Board of Governors or any other committee of the Corporation, may participate in a meeting thereof by means of communications facilities that ensure all persons participating in the meeting can hear and speak to each other, and participation in a meeting pursuant to this By-Law shall constitute presence in person at such meeting. No member of the Board of Governors shall vote by proxy at any meeting of the Board.

[Action by Written Consent of Governors]

[Sec. 9. Unless otherwise restricted by the Restated Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Governors, or of any committee of the Board or any committee of the Corporation, may be taken without a meeting, if all members of the Board of Governors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Governors or such committee.]

[ARTICLE VIII]

[District Committees]

[Administrative Districts]

[Sec. 1. For the purpose of administration, the United States is hereby divided into districts, the boundaries of which shall be established by the Board. The Board may from time to time make such changes in the number or boundaries of such districts as it deems necessary or appropriate. Neither the establishment nor any change in the number or boundaries of such districts need be submitted to the membership for approval, and the number or boundaries, as established or changed, shall become effective at such time as the Board may prescribe. 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.]

**[District Committees and District Business Conduct]
Committees**

[**Sec. 2.** (a) For the purpose of effectuating a maximum degree of local administration of the affairs of the Corporation, each of the districts created under Section 1 of this Article shall elect a District Committee, as hereinafter provided. Each such District Committee shall determine the number of its members so to be elected, but no District Committee shall consist of more than twelve members unless otherwise provided by resolution of the Board.]

[(b) In the event of the refusal, failure, neglect or inability of any member of any District Committee to discharge his duties, or for any cause affecting the best interests of the Corporation the sufficiency of which shall be decided by the District Committee, the District Committee shall have the power by the affirmative vote of two-thirds of the members of the District Committee then in office, to remove such member and declare his position vacant and that it shall be filled in accordance with the provisions of Section 5 of this Article; provided, however, that any member of any District Committee who has had his position declared vacant in the manner provided herein shall have the right to appeal the determination of the District Committee to the Board of Governors within 30 days after the date he is notified of the action of the District Committee. The Board of Governors shall thereafter have the authority to affirm, reverse or modify the determination of the District Committee. Any such action by the Board shall be by the affirmative vote of at least two-thirds of the governors then in office.]

[(c) The District Committees shall also serve as the District Business Conduct Committees for their respective districts.]

[Term of Office of District Committee Members]

[**Sec. 3.** Each regularly elected member of a District Committee shall hold office for a term of three (3) years, and until his successor is elected and qualified, or until his death, resignation or removal.]

[Election of District Committee Members]

[**Sec. 4.** Members of the District Committees shall be elected as follows:]

[Procedure for Nominations by Nominating Committees]

[(a) Before June 1 of each year, the Secretary of the Corporation shall notify in writing the Chairman of each respective District Committee of the expiration of the term of office of any member of that District Committee which shall expire during the next calendar year. The said Chairman shall thereafter, but not later than July 1, advise the Nominating Committee, which shall proceed to

nominate a candidate from their District for the office of each member of the District Committee whose term is to expire. Nominating Committees in nominating candidates for the office of member of the District Committee shall endeavor, as nearly as practicable, to secure appropriate and fair representation on the District Committee of the various sections of the District and of all classes and types of members engaged in the investment banking or securities business within such District. No Nominating Committee shall nominate an incumbent member of the District Committee to succeed himself unless it first takes appropriate action by a written ballot of the entire membership within the District to ascertain that such nomination is acceptable to a majority of the members in the District except where the incumbent member of the District Committee is serving pursuant to the provisions of Section 5 of this Article. Before October 1 of each year, each candidate nominated by the Nominating Committees shall be certified to the respective District Committee. Within five (5) days after certification, a copy of such certification shall be sent by the District Committee to each member of the Corporation eligible to vote in the District. Such candidate shall be designated the "regular candidate."]

[Nomination of Additional Candidates]

[(b) An additional candidate or candidates may be nominated for the office of any member whose term is to expire or for any new office created by the District Committee pursuant to Section 2 of this Article, if written notice of the nomination, signed by at least ten percent of the members of the Corporation eligible to vote in the district, is filed with the District Committee within thirty (30) days from the date of the notice of the action taken by the Nominating Committee. If no additional candidate or candidates are nominated within such thirty-day period, then the candidate or candidates nominated by the Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board of Governors.]

[Contested Elections]

[(c) If any additional candidate or candidates are nominated, as provided in paragraph (b) of this Section, the District Committee shall forthwith cause the names of the regular candidate for any contested office and of all other candidates for such office to be placed upon a ballot, which shall be sent to all members of the Corporation eligible to vote in the district. Each member of the Corporation having its principal place of business in the district shall be entitled to one vote, and each member having one or more registered branch offices in the district shall be entitled to vote as provided in Section 9 of Article III. The District Committee shall fix the date before which ballots must be returned to be counted. All ballots shall be opened by such officer or employee of the Corporation as the Chairman of the District Committee may designate, and in the presence of a representative of each of the candidates if such representation is requested in writing by any candidate named in the ballot. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the District Committee, and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be a run-off election. In all elections held under this Section, voting shall be by secret mail ballot, the procedure for which shall be prescribed by the Board of Governors.]

[Filling of Vacancies on District Committees]

[**Sec. 5.** All vacancies in any District Committee other than those caused by the expiration of a Committee member's term of office, shall be filled as follows:]

[The District Committee shall appoint a representative of a member firm having a place of business in the same district to fill any vacancy resulting from the unexpired term of a departed Committee member. Such appointment shall be effective until the next regularly scheduled election occurs, in accordance with the provisions of Section 4 of this Article. Following this election, the newly elected Committee member will serve only the duration of the departed Committee member's term.]

[Meetings of District Committees]

[**Sec. 6.** Meetings of each District Committee shall be held at such times and places, upon such notice, and in accordance with such procedure as each District Committee in its discretion may determine. A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority at any meeting at which a quorum is present, except as otherwise provided in the By-Laws, shall constitute the action of the Committee. Action by a District Committee may be taken by 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 Chairmen and Other District Officers]

[**Sec. 7.** Following the annual election of members of the District Committees pursuant to Section 4 of this Article, each District Committee shall elect from its members a Chairman 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.** (a) The Chairman of the District Committees, elected pursuant to Section 7 of this Article, shall constitute an Advisory Council to the Board of Governors.

(b) Such Advisory Council shall be advised of and entitled to attend such meetings of the Board of Governors as the Board may designate 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 of Governors.]

[Expenses of District Committees]

[**Sec. 9.** Funds to meet the regular expenses of each District Committee, elected pursuant to Section 4 of this Article, shall be provided by the Board of Governors out of funds collected by it

under the provisions of Article VI hereof, and all such expenses shall be subject to the approval of the Board of Governors.]

[District Committees Agencies of the Corporation]

[Sec. 10. The District Committees shall act as the agencies of the Corporation for the administration of its affairs in their respective districts and as such shall have such powers and duties as are provided in the By-Laws or from time to time delegated by the Board of Governors.]

[Certain Functions of District Committees]

[Sec. 11. The District Committees shall endeavor, in such manner as they deem appropriate, to educate members and other brokers and dealers in their respective districts as to the objects, purposes and work of the Corporation in order to foster their interest and cooperation. District Committees shall consider the practical operation of all provisions of the rules of the Corporation and shall report to the Secretary any which the District Committees believe do not work satisfactorily in their respective districts.]

[Transitional Provisions]

[Sec. 12. The Board, by resolution amending or supplementing the provisions of this Article and Article IX, shall have the authority to establish the policies and procedures applicable to District Committees affected by a change in the number or boundaries of the districts, including, without limitation, prescribing the procedures for nomination and election of District Committee members.]

[ARTICLE IX]

[Nominating Committees]

[Composition of Nominating Committees]

[Sec. 1. (a) Each of the Districts created under Section 1 of Article VIII of the By-Laws shall elect a Nominating Committee, as provided in Section 3 of this Article. Each such Nominating Committee shall consist of five members; provided, however, that the Board by resolution may increase any such Nominating Committee to a larger number. Members of the Nominating Committee in each District shall be members of the Corporation having places of business in the respective District, but shall not be members of the District Committee. All Nominating Committees shall include a majority of persons who have previously served on a District Committee or who are current or former Governors and shall include at least one current or former Governor.]

[(b) In the event of the refusal, failure, neglect or inability of any member of any Nominating Committee to discharge his duties, or for any cause affecting the best interest of the Corporation, the sufficiency of which shall be decided by the Nominating Committee, the Nominating Committee shall have the power, by the affirmative vote of three-fifths of the members of the Nominating Committee

then in office, to remove such member and declare his position vacant and that it shall be filled in accordance with the provisions of Section 3 of this Article; provided, however, that any member of any Nominating Committee who has had his position declared vacant in the manner provided herein shall have the right to submit a written appeal in respect to the determination of the Nominating Committee to the Board of Governors within thirty (30) days after the date he is notified in writing of the action of the Nominating Committee. The Board of Governors shall thereafter have the authority to affirm, reverse or modify the determination of the Nominating Committee. A vote of two-thirds of the Governors then in office shall be required to reverse or modify the action of the Nominating Committee.]

[Term of Office of Nominating Committee Members]

[Sec. 2. Each regularly elected member of a Nominating Committee shall hold office for a term of one (1) calendar year, and until his successor is elected and qualified, or until his death, resignation or removal.]

[Election of Nominating Committees]

[Sec. 3. Members of the Nominating Committee shall be elected as follows:]

[Procedures for Nominations by Nominating Committees]

[(a) Before June 1 of each year the Secretary of the Corporation shall notify in writing the Chairmen of the respective District Committees as to those members of the District Nominating Committee who were elected for the present year and as to the offices of that Committee that are to be filled by the next election. The said Chairman shall thereupon notify the Nominating Committee elected for such District and the Nominating Committee shall proceed to nominate a candidate from such District for the offices of that Committee which are to be filled by the next election. The Nominating Committee in nominating candidates for the office of member of the Nominating Committee shall endeavor, as nearly as practicable, to secure appropriate and fair representation on the Nominating Committee of the various sections of the District and of all classes and types of members engaged in the investment banking or securities business within such District and shall assure that the composition of the Nominating Committee meets the standards contained in Section 1(a) of this Article. No Nominating Committee shall nominate more than two incumbent members of the Nominating Committee to succeed themselves. No member of any Nominating Committee may serve more than two consecutive terms. Before October 1 of each year, each candidate nominated by the Nominating Committees shall be certified to the respective District Committee. Within five (5) days after certification, a copy of such certification shall be sent by the District Committee to each member of the Corporation eligible to vote in the District. Such candidate shall be designated the "regular candidate."]

[Nomination of Additional Candidates]

[(b) Additional candidates may be nominated for the office of any member whose term is to expire or for any new office created by the Board of Governors pursuant to Section 1(a) of this Article, provided that election of such candidates would be consistent with the requirements of Section 1(a) of this Article, if written notice of the nomination, signed by at least ten percent of the members of the Corporation eligible to vote in the district, is filed with the District Committee within thirty (30) days from the date of the notice to the members of the action taken by the Nominating Committee. If no additional candidate or candidates are nominated within such thirty-day period, then the candidate or candidates nominated by the Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board of Governors.]

[Contested Elections]

[(c) If additional candidates are nominated, as provided in paragraph (b) of this Section, the District Committee shall forthwith cause the names of the regular candidate and all other candidates for any contested office to be placed upon a ballot, which shall be sent to all members of the Corporation eligible to vote in the District. Each member of the Corporation having its principal place of business in the District shall be entitled to one vote, and each member having one or more registered branch offices in the District shall be entitled to vote as provided in Section 9 of Article III. The District Committee shall fix the date before which ballots must be returned to be counted. All ballots shall be opened by such officer or employee of the Corporation as the Chairman of the District Committee may designate, and in the presence of a representative of each of the candidates, if such representation is requested in writing by any candidate named in the ballot. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the Nominating Committee and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be a run-off election. In all elections held under this Section, voting shall be by secret mail ballot, the procedure for which shall be prescribed by the Board of Governors.]

[Filling of Vacancies for Nominating Committees]

[Sec. 4. In the event of any vacancy on any Nominating Committee caused by the departure of a Committee member prior to the expiration of that member's term of office the Nominating Committee shall appoint a representative of a member of the Corporation eligible to vote in the same District to fill the vacancy. Such appointment shall be effective until the next regularly scheduled election occurs, in accordance with the provisions of Section 3 of this Article.]

[Meetings of Nominating Committees]

[Sec. 5. Meetings of each Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedure as each Nominating Committee in its discretion may determine. A quorum of a Nominating Committee shall consist of a majority of its members, and any action taken by a majority of the entire Committee at any meeting except as otherwise provided

in the By-Laws, shall constitute the action of the Committee. Action by a nominating Committee may be taken by 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 Nominating Committee.]

[Election of Chairman and Other Nominating Committee Officers]

[Sec. 6. Following the annual election of members of the Nominating Committees pursuant to Section 3 of this Article, each Nominating Committee shall elect from its members a Chairman and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.]

[Transitional Provisions]

[Sec. 7. The Board, by resolution amending or supplementing the provisions of this Article and Article VIII, shall have the authority to establish the policies and procedures applicable to District Nominating Committees affected by a change in the number or boundaries of the districts, including, without limitation, prescribing the procedures for nomination and election of District Nominating Committee members.]

ARTICLE [X] VII

Officers [and Employees]

[Election of Officers of the Board]

[Sec. 1. As soon as practicable, following the annual election of members to the Board of Governors, the Board of Governors shall elect from its members a Chairman, one or more Vice Chairmen, and such other officers as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. The officers so elected shall have such powers and duties as may be determined from time to time by the Board of Governors. The Board of Governors, by affirmative vote of a majority of its members, may remove any such officer at any time.]

Officers [of the Corporation]

Sec. [2] 1. The Board of Governors shall select a Chief Executive Officer, who shall be responsible for the management and administration of its affairs and shall be the official representative of the Corporation in all public matters and who shall have such powers and duties in the management of the Corporation as may be prescribed in a resolution by the Board of Governors, and which powers and duties shall not be inconsistent with the Delegation Plan. [The Chief Executive Officer shall be ex-officio a member of any committee authorized by the Board of Governors.] The Board may provide for such other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to, Executive Vice-President, Senior Vice-President, Vice-President,

[General Counsel,] Secretary, and Treasurer of the Corporation. All such officers shall have such titles, such powers and duties and shall be entitled to such compensation as shall be determined from time to time by the Board of Governors. Each such officer shall hold office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. The Board of Governors may remove any officer, with or without cause, at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Governors at any meeting.

Absence of Chief Executive Officer

Sec. [3] 2. In the case of the absence or inability to act of the Chief Executive Officer of the Corporation, or in case of a vacancy in such office, the Board of Governors may appoint its Chairman or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the Chief Executive Officer.

Employment of Counsel

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

Administrative Staff

Sec. [5] 4. The Board of Governors may employ or authorize the employment and prescribe the powers and duties of such an administrative staff as it deems necessary or advisable. The employment and compensation of such administrative staff of the Corporation shall be at the pleasure of the Board of Governors, provided that such determinations are not inconsistent with the requirements of the Delegation Plan.

Compensation of Board and Committee Members

Sec. [6] 5. The Board may provide for reasonable compensation of the Chairman of the Board, Governors, and the members of any committee of the Board [or any District Committee] from the Corporation. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Corporation.

ARTICLE [XI] VIII

Committees

[National Committees]

Sec. 1. The Board may appoint such committees or subcommittees as it deems necessary or desirable, and it shall fix their powers, duties and terms of office; provided that such determinations are not inconsistent with the requirements of the Delegation Plan. Any such committee or subcommittee consisting of one or more Governors, to the extent provided by these By-Laws or by resolution of the Board, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the Corporation.

[Committees of the Districts]

[**Sec. 2.** Each District Committee, in the exercise of its powers and performance of its duties as provided in the By-Laws, may, except as otherwise herein provided, appoint such committees or subcommittees as it deems necessary or desirable, and shall fix their powers, duties and terms of office.]

Removal of Committee Member

Sec. [3] 2. Any member of any committee or subcommittee appointed pursuant to this Article [XI]VIII may be removed from such committee or subcommittee [office], after appropriate notice [from the District Committee appointing such member, or from the Board, if it is the appointing authority], for refusal, failure, neglect or inability to discharge his duties, or for any cause the sufficiency of which shall be decided by the [District Committee or the] Board[, whichever is the appointing authority].

[Executive Committee]

[**Sec. 4.** By resolution passed not less than annually by a majority of the entire Board of Governors, there may be created an Executive Committee, consisting of five or more members of the Board. The Executive Committee shall exercise such of the powers of the Board in the management of the Corporation between meetings of the Board of Governors as may be delegated to it from time to time by the Board. The Executive Committee created hereunder shall keep minutes of its meetings and shall report its proceedings to the Board of Governors at the next meeting thereof.]

ARTICLE [XII] IX

Conduct Rules [of Fair Practice]

[**Sec. 1.]** To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the Corporation, to

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

ARTICLE [XIII] X

Disciplinary Proceedings

Sec. 1. The Board of Governors shall have authority to establish procedures relating to disciplinary proceedings involving members and their associated persons[, and neither the adoption nor any amendment to such procedures need be submitted to the membership for approval and such procedures and any amendments thereto shall become effective as the Board of Governors may prescribe].

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

- (a) specific charges shall be brought;
- (b) such member or person associated with a member shall be notified of and be given an opportunity to defend against such charges;
- (c) a record shall be kept; and
- (d) any determination shall include a statement setting forth:
 - (1) any act or practice, in which such member or person associated with a member may be found to have engaged or which such member or person associated with a member may be found to have omitted;
 - (2) the rule, regulation or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;

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

(4) the penalty imposed.

ARTICLE [XIV] XII

Powers of Board to Prescribe Sanctions

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

(a) breach by a member or a person associated with a member of any covenant with the Corporation or its members;

(b) violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the rules of the Corporation, the federal securities laws, including the rules and regulations adopted thereunder, and including rules of the Municipal Securities Rulemaking Board and the rules of the Treasury Department;

(c) failure by a member or person associated with a member to submit a dispute for arbitration under the Code of Arbitration Procedure ("Arbitration Code") as required by the Arbitration Code, or to fail to appear or to produce any document in their possession or control as directed pursuant to provisions of the Arbitration Code, or to fail to honor an award of arbitrators properly rendered pursuant to the Arbitration Code where a timely motion has not been made to vacate or modify such award pursuant to applicable law;

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

(e) failure by a member or person associated with a member to adhere to any ruling, order, direction or decision of, or to pay any penalty, fine or costs, imposed by the Board, [the National Business Conduct Committee, the Market Surveillance Committee,] or any [other] committee exercising powers assigned by the Board [or any District Business Conduct Committee].

ARTICLE [XV] XII

Uniform Practice Code

Authority to Adopt Code

Sec. 1. The Board of Governors is hereby authorized to adopt a Uniform Practice Code and amendments, interpretations and explanations thereto, designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business with respect to such matters as trade terms, deliveries, payments, dividends, rights, interest, reclamations, exchange of confirmations, stamp taxes, claims, assignments, powers of substitution, computation of interest and basis prices, due-bills, transfer fees, "when, as and if issued" trading, "when, as and if distributed" trading, marking to the market and close-out procedure, all to the end that the transaction of day-to-day business by members may be simplified and facilitated, that business disputes and misunderstandings, which arise from uncertainty and lack of uniformity in such matters, may be eliminated, and that the mechanisms of a free and open market may be improved and impediments thereto removed. [Neither the adoption nor any change in the Uniform Practice Code need be submitted to the membership for approval and the Code as adopted or amended shall become effective at such time as the Board of Governors may prescribe.]

Administration of Code

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

Transactions Subject to Code

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

ARTICLE [XVI] XIII

Limitation of Powers

Prohibitions

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

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

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

Use of Name of Corporation by Members

Sec. 2. No member shall use the name of the Corporation except to the extent that may be authorized by the Board of Governors.

Unauthorized Expenditures

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

Conflicts of Interest

Sec. 4. [No] A member of the Board of Governors or of any committee of the Corporation shall not directly or indirectly participate in any adjudication of the interests of any party [which would at the same time substantially affect his interest or the interests of any person in whom he is directly or indirectly interested. In any such case, the member shall disqualify himself or shall be disqualified by the Chairman of the Board or Committee] if such participation would violate the conflict of interest provisions of the Procedural Rules of the Corporation.

Municipal Securities

Sec. 5. The provisions of the By-Laws conferring rulemaking authority upon the Board of Governors shall not be applicable to the municipal securities activities of members or persons

associated with members to the extent that the application of such authority would be inconsistent with Section 15B of the Act.

Government Securities

Sec. 6. The provisions of the By-Laws governing qualifications of members and persons associated with members and conferring rulemaking authority upon the Board of Governors shall not be applicable to the Government securities activities of members or persons associated with members to the extent that the application of such provisions or authority would be inconsistent with Section 15A(f) of the Act.

ARTICLE [XVII] XIV

Procedure for Adopting Amendments to By-Laws

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

ARTICLE [XVIII] XV

Corporate Seal

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

ARTICLE XIX

Checks

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

ARTICLE XX

Annual Financial Statement

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

PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO SUBSIDIARIES

I. NASD, Inc.

The National Association of Securities Dealers, Inc. (referenced as "NASD[®]"), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as "NASDR") and The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. Governors, Directors and Committee Members

The following definitions are applicable to Governors of the NASD, Directors of the Subsidiaries, and Members of Committees of the NASD and the Subsidiaries.

1. "Industry" Governors, Directors or Committee Members shall include

- a. officers, directors and employees of brokers and dealers and persons who have been employed in any such capacity at any time within the prior three years; and
- b. persons who have consulting or employment relationships with or have provided professional services to the Association and persons who have had any such relationship or provided any such services at any time within the prior three years.

2. "Non-industry" Governors, Directors or Committee Members shall be

- a. Public Governors;

- b. officers and employees of issuers of securities listed on The Nasdaq Stock MarketSM or traded in the over-the-counter market;

- c. persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate);

- d. employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and

- e. other individuals who would not be Industry Governors, Directors or Committee Members.

3. "Public" Governors, Directors or Committee Members shall be Non-industry persons who have no material business relationship with a broker, dealer or the Association.

B. Functions and Authority of the NASD

The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A. and III.A, the NASD has

delegated certain authority and functions to its subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the Exchange Act or as set forth in the articles of incorporation or the by-laws is hereby reserved, except as expressly delegated to the Subsidiaries. In addition, the NASD expressly retains the following authority and functions:

1. **To exercise** overall responsibility for ensuring that the Association's statutory and self-regulatory obligations and functions are fulfilled.
2. **To delegate** authority to the Subsidiaries to take actions on behalf of the NASD.
3. **To elect** the Subsidiary Boards of Directors.
4. **To review** the rulemaking and disciplinary decisions of the Subsidiaries (See Sections II.C. and III.C. below).
5. **To coordinate** actions of the Subsidiary Boards as necessary.
6. **To resolve** any disputes between the Subsidiaries.
7. **To administer** common overhead and technology of the Subsidiaries.
8. **To administer** the Office of Internal Review as provided in Section I.D.4 below.
9. **To manage** external Association relations on major policy issues.
10. **To direct** the Subsidiaries to take action necessary to effectuate the purposes and functions of the Association.

C. Board of Governors

1. Composition: The NASD Board of Governors ("NASD Board") shall be composed of at least Nine (9) and no more than Thirteen (13) Governors, a majority of whom shall be Non-industry (including at least Two (2) Public Governors). The Chief Executive Officer ("CEO") of NASD shall be a Governor. In the event that the NASD Board shall consist of Eleven (11) or more Governors, at least Three (3) shall be Public Governors.

2. Election Procedures

a. Commencing with the selection of Governors to take office in April of 1997, Governors (except the CEO of NASD) shall be elected by a majority vote of those members of the NASD casting ballots on a slate of nominees presented to the NASD membership by the National Nominating Committee for election by secret ballot.

b. National Nominating Committee

- (1) The National Nominating Committee shall be composed of at least Six (6) and not more than Nine (9) members, equally balanced between Industry and Non-industry Committee Members (including at least Two (2) Public Committee Members). In the event that the Nominating Committee shall consist of Seven (7) or more members, at least Three (3) shall be Public Committee Members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-industry Committee Members shall be in the majority. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD. No more than three of the Committee Members and no more than two of the Industry Committee Members shall be current members of the NASD Board or of the Board of Directors of one of the Subsidiaries (collectively the "Association Boards"). Any member of the National Nominating Committee who is a current member of any Association Board shall be in his or her final year of service on any Association Board.
- (2) Members of the National Nominating Committee shall be appointed annually by the NASD Board and may be removed for cause by a majority vote of the NASD Board.
- (3) The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new

Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.

3. Contested Elections

a. A candidate for the NASD Board who has not been nominated may be included on the ballot if the candidate presents duly executed petitions to the National Nominating Committee demonstrating that such candidate has the support of Two (2) percent of the members of the NASD.

b. A candidate for the NASD Board shall be certified by the National Nominating Committee and included on the ballot only if the Committee certifies that the candidate's petitions are duly executed by the requisite number of members of the NASD and that the candidate meets the qualifications for the position to be filled, as defined in Section I.A. above.

4. Term of Office

a. Each Governor shall hold office for a term of not more than Three (3) years, or until a successor is elected and qualified, or until death, disqualification, resignation, or removal. Except as provided in paragraphs b. and c., Governors may not serve more than Two (2) consecutive terms of office on any Association Board.

b. The CEO of the NASD shall serve as a member of the NASD Board until a successor is selected and qualified, or until death, resignation, disqualification, or removal.

c. Where a Governor is appointed to fill a term of less than One (1) year, such Governor shall not be precluded from serving Two (2) additional terms of office.

5. Vacancies

a. If a Governor position becomes vacant before the expiration of the Governor's term of office, the National Nominating Committee shall recommend, and the NASD Board shall elect by majority vote of the remaining Governors, a person satisfying the criteria for a Governor position of the type (Industry, Non-industry or

Public) vacated, as defined in Section I.A. above, unless such Governor has a remaining term of office of no more than Six (6) months, in which case no replacement will be required.

b. If a Governor no longer satisfies the criteria for the category in which he or she was elected (Industry, Non-industry or Public) and has a remaining term of office of more than Six (6) months, such Governor shall be automatically removed from office unless the remaining members of the NASD Board determine otherwise by a majority vote and the failure to remove the Governor does not affect the proportional representation set forth in Section I.C.1. above.

D. Audit Committee

1. **The Audit Committee** shall be a committee of the NASD Board and shall have the following functions:

a. To ensure the existence of adequate controls and the integrity of the financial reporting process of the Association.

b. To recommend to the NASD Board, and to monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD.

c. To direct and oversee all the activities of the Association's internal review function, including but not limited to management's responses to the internal review function.

2. **Composition:** The Audit Committee shall be composed of Four (4) or Five (5) members of the NASD Board, none of whom are officers or employees of the Association. The Committee shall include at least One (1) Public Committee Member who shall serve as Chairperson of the Committee. The Committee shall have no more than Two (2) Industry Committee Members. If the Committee shall have Four (4) members it shall have not more than One (1) Industry Committee Member. In the event that the size of the NASD Board shall at any time consist of Eleven (11) or more members, the Audit Committee shall include Two (2) Public Committee Members. In addition, each

Subsidiary shall designate a Public Member of its Board as a liaison to the Audit Committee. The Audit Committee may consult with that person on issues relating to the functions of the Subsidiary, but neither the liaison nor any officer or employee of the Association shall serve on the Audit Committee in any voting or non-voting capacity.

3. No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company or individual if he or she has a material interest in, or a professional, business or personal relationship with, that member, company or individual or if such participation shall create an appearance of impropriety. Committee members shall consult with the General Counsel of NASD to determine if recusal is necessary. In the event that a member of the Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Committee.

4. Office of Internal Review: The Audit Committee shall have exclusive authority:

- a. to hire or terminate the Director of Internal Review,
- b. to determine the compensation of the Director of Internal Review, and
- c. to determine the budget for the Office of Internal Review.

The Office of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters it deems appropriate and may request that senior NASD management perform such operational oversight

as necessary and proper, consistent with preservation of the independence of the internal review function.

E. Management Compensation Committee

1. The Management Compensation Committee shall be a Committee of the NASD and shall have the following functions: To consider and recommend compensation policies, programs and practices for employees of the Association.

2. Composition: The Management Compensation Committee shall be composed of Four (4) or more Members of the NASD Board, equally balanced between Industry and Non-industry Governors. If at any time there shall be an odd number of members of the Management Compensation Committee, Non-industry Committee Members shall be in the majority.

F. Access to and Status of Officers, Directors, Employees, Books, Records and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A. and III.A. below, the staff, books, records and premises of the Subsidiaries are the staff, books, records and premises of the NASD subject to oversight pursuant to the Securities Exchange Act of 1934 ("Act"), and all officers, directors, employees and agents of the Subsidiaries are officers and directors, employees and agents of the NASD for purposes of the Act.

II. NASD Regulation, Inc. (“NASDR”)

A. Delegation of Functions and Authority

1. The NASD hereby delegates to, the NASDR and the NASDR assumes the following responsibilities and functions as a registered securities association:

a. To establish rules and regulations for NASD members including, but not limited to, fees and membership requirements and the Code of Arbitration and Mediation Procedure.

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to,

(i) arbitration of disputes among and between NASD members, associated persons and customers,

(ii) public and private sale or distribution of securities including underwriting arrangements and compensation,

(iii) financial responsibility,

(iv) qualifications for NASD membership and association with NASD members,

(v) clearance and settlement of securities transactions,

(vi) NASD member advertising practices,

(vii) administration, interpretation and enforcement of Association rules,

(viii) administration and enforcement of Municipal Securities Rulemaking Board (“MSRB”) rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, and

(ix) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

c. To take necessary or appropriate action to assure compliance with Association policy,

Association and MSRB rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.

d. To administer programs and systems for the surveillance and enforcement of rules governing NASD members’ conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market.

e. To examine and investigate NASD members and associated persons to determine if they have violated Association or MSRB rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer, interpret or enforce.

f. To administer Association enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions.

g. To administer the Association’s office of professional hearing officers.

h. To conduct arbitrations, mediations and other dispute resolution programs.

i. To conduct qualification examinations and continuing education programs.

j. To operate the Central Registration Depository (“CRDSM”).

k. To determine whether applicants for NASD membership have met the requirements for membership established by the Association.

l. To place restrictions on the business activities of NASD members consistent with the public interest, the protection of investors and the federal securities laws.

m. To determine whether persons seeking to register as associated persons of NASD members have met such qualifications for registration as may be established by the Association,

including whether statutorily disqualified persons will be permitted to associate with particular NASD members and the conditions of such association.

- n. To oversee all District Office activities.
- o. To establish the annual budget and business plan for NASDR.
- p. To determine allocation of NASDR resources.
- q. To establish and assess fees and other charges on NASD members, persons associated with NASD members and others using the services or facilities of NASDR.
- r. To manage external relations on enforcement, regulatory and other policy issues with Congress, the Securities and Exchange Commission ("SEC"), state regulators, other self-regulatory organizations, business groups and the public.

2. All action taken pursuant to authority delegated pursuant to 1. shall be subject to the review, ratification or rejection by the NASD Board in accordance with procedures established by the NASD Board.

B. Board of Directors

1. Subsequent to January of 1997, the NASDR Board of Directors ("NASDR Board") shall be composed of at least Twenty-one (21) and no more than Twenty-five (25) Directors. The President of NASDR shall be a member of the NASDR Board and the remaining members shall be equally balanced between Industry and Non-industry Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. The NASDR Board shall include Seven (7) representatives of NASD members representing geographical regions defined by the NASDR Board, and at least Three (3) at-large industry representatives. The NASDR Board shall include at least Ten (10) Non-industry Directors, including at least Three (3) Public Directors. In the event that the NASDR Board shall consist of more than Twenty-two (22)

Members, at least Four (4) shall be Public Directors. The NASDR Board shall include representatives of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member. The CEO of NASD shall be an ex-officio non-voting member of the NASDR Board.

2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the NASDR Board.

b. The Seven (7) Industry Members of the NASDR Board shall be nominated by Regional Nominating Committees for consideration by the National Nominating Committee. A Regional Nominating Committee shall consist of equal numbers of members from each district comprising the regions and members shall be selected by the District Committee for that District.

c. Any officer, director or employee of an NASD member who has not otherwise been nominated by the Regional Nominating Committee may seek nomination if the candidate presents duly executed petitions to the Regional Nominating Committee for the appropriate geographical region demonstrating that such candidate has the support of at least Ten (10) percent of the NASD members in that region. The Regional Nominating Committee shall submit the names of its nominees and of all the candidates presenting qualifying petitions to the members in that region for nomination by secret ballot. The Regional Nominating Committee shall nominate to the National Nominating Committee the candidate receiving the most votes.

d. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under Sections I.C.4. and 5. above.

C. NASDR Board Procedures

1. Disciplinary Actions: Any initial disciplinary decision of the Association, including dismissals, may be appealed to the National Business Conduct Committee ("NBCC") within Fifteen

(15) calendar days, or called for review by the NBCC within Forty-five (45) calendar days, as set forth in the Code of Procedure. A decision of the NBCC may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is Fifteen (15) calendar days or more following the decision of the NBCC or NASD Board. Any disciplinary decision not appealed or called for review shall become the final action of the Association upon the expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

2. Statutory Disqualification Decisions: Any decision of the NBCC with respect to statutory disqualification may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is Fifteen (15) calendar days or more following the decision of the NBCC or the NASDR Board. Any decision that is not called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

3. Rule Filings: Any rule change adopted by the NASDR Board that imposes fees or other charges on persons or entities other than NASD members or that the NASDR Board refers to the NASD Board because in the view of the NASDR Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the NASDR Board does not refer a rule change to the NASD Board for review, the NASDR Board action will become the final action of the Association unless called for review by any member of the NASD

Board not later than its meeting next following the NASDR Board's action, but which is Fifteen (15) calendar days or more following the action of the NASDR Board. During the process of developing rule proposals, NASDR staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the NASDR Board.

D. Supplemental Delegation Regarding the Formation of Committees

1. The NASDR board may designate One (1) or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the NASDR Board in carrying out the functions and authority delegated to the NASDR by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the NASDR Board in accordance with procedures established by the NASDR Board.

a. National Business Conduct Committee: A National Business Conduct Committee may be created for the purpose of:

- (i)** Hearing and deciding appeals of initial disciplinary decisions of the Association.
- (ii)** Considering and recommending to the NASDR Board policy and rule changes relating to the business and sales practices of NASD members and associated persons.
- (iii)** Considering and recommending Association enforcement policies, including policies with respect to fines and other sanctions.

b. The NBCC shall be composed of at least Eight (8) members of the NASDR Board equally balanced between Industry and Non-industry Committee Members (including at least One (1) Public Member). If at any time there shall be an odd number of Committee

Members, a majority of the Members shall be Non-industry. Each NBCC Member shall be elected to serve a One-year (1) term.

2. Other Committees: With respect to any other committees that may be formed pursuant

to this Section D for purposes other than those set forth in 1. above, such committee shall be created in accordance with the by-laws by resolution or resolutions adopted by a majority of the whole NASDR Board.

III. Delegation to Nasdaq

A. Delegation of Functions and Authority

1. The NASD hereby delegates to Nasdaq[®] and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.

b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports and comparisons of transactions.

c. To collect, process, consolidate and provide to NASDR the information requisite to operation of the surveillance audit trail.

d. To develop and adopt rule changes

(i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over-the-counter market,

(ii) for Nasdaq-operated trading systems for these securities, and

(iii) establishing trading practices with respect to these securities.

e. To develop and adopt rules, interpretations, policies and procedures to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non-discriminatory manner.

h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or the trading in the third market for securities listed on a registered exchange.

i. To develop, adopt and administer rules governing listing standards applicable to securities traded on The Nasdaq Stock Market and the issuers of those securities.

j. To establish standards for participation in The Nasdaq Stock Market, other markets or systems operated by Nasdaq, and determine in accordance with Association and Nasdaq procedures if:

(i) persons seeking to participate in any of such markets and systems have met the standards established for participants; and

(ii) persons participating in any of the markets or systems continue to meet the standards established for participants.

k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.

l. To establish the annual budget and business plan for Nasdaq.

m. To determine allocation of Nasdaq resources.

n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by The Nasdaq Stock Market with Congress, the SEC, state regulators, other self-regulatory organizations, business groups and the public.

2. All action taken pursuant to authority delegated pursuant to 1. shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

B. Board of Directors

1. Composition: As of January of 1997, the Nasdaq Board of Directors ("Nasdaq Board") shall be composed of at least Eleven (11) and not more than Fifteen (15) Directors. The President of Nasdaq shall be a member of the Nasdaq Board and the remaining Members shall be equally balanced between Industry and Non-industry Directors, including at least Two (2) Public Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. In the event that the Nasdaq Board shall consist of more than Twelve (12) Members, at least Three (3) shall be Public Directors. The CEO of NASD shall be an ex-officio non-voting member of the Nasdaq Board.

2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the Nasdaq Board.

b. **Terms of Office and Vacancies:** The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under I.C.4. and 5. above.

C. Nasdaq Board Procedures

1. Listing/Delisting Decisions: Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing and Hearing Review Committee ("Listing Committee") within Fifteen (15) calendar days, or called for review by any member of the Listing Committee within Forty-five (45) days, as set forth in the Code of Procedure. A decision of the Listing Committee may be called for review by any member of the Nasdaq Board not later than its meeting next following the Listing

Committee's decision. A decision of the Nasdaq Board may be called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's decision but which is Fifteen (15) calendar days or more following the decision of the Listing Committee or the Nasdaq Board. Any decision not appealed or called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing Committee, Nasdaq Board or NASD to the SEC.

2. Rule Filings: Any rule change adopted by the Nasdaq Board that imposes fees or other charges on persons or entities other than NASD members or issuers or that the Nasdaq Board determines to refer to the NASD Board because in the view of the Nasdaq Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's action but which is Fifteen (15) calendar days or more following the action of the Nasdaq Board. During the process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of NASDR staff before presenting any rule proposal to the Nasdaq Board.

D. Supplemental Delegation Regarding the Formation of Committees

The Nasdaq Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the Nasdaq Board in carrying out the functions and authority delegated to Nasdaq by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and

Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the Nasdaq Board.

1. Specific Committees

a. Quality of Markets Committee ("QOMC")

(1) The QOMC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To provide advice and guidance to the Nasdaq Board on issues relating to the fairness, integrity, efficiency and competitiveness of the information, order handling and execution mechanisms of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by The Nasdaq Stock Market from the perspective of investors, both individual and institutional, retail firms, market making firms and Nasdaq-listed companies and other participants in The Nasdaq Stock Market.

(ii) To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.

(2) The QOMC will have broad representation that is equally balanced between Industry and Non-industry committee members. The committee members shall include broad representation of participants in The Nasdaq Stock Market including investors, market makers, integrated retail firms and order entry firms.

b. Market Operations Review Committee ("MORC")

(1) The MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in Section 70 of the Uniform Practice Code ("UPC"), in accordance with the procedures specified therein. NASDR shall receive weekly reports of all determinations made by the staff or MORC under Section 70 of the UPC for regulatory review.

(2) The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed Ten (10) percent of its total revenues.

c. Firm Operations and Clearance Committee ("FOCC")

(1) The FOCC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To issue interpretations or rulings with respect to Sections 4-10, 12, 46, 67-68 and 70-71 of the UPC, as well as any other provision of the UPC pertaining to transactions and post execution processing.

(ii) To advise the Nasdaq Board with respect to modifications to the UPC dealing with the transactions and post execution processing.

d. Nasdaq Listing and Hearing Review Committee ("Listing Committee")

(1) The Listing Committee shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To advise the Nasdaq Board on the formulation or modification of initial or maintenance eligibility criteria and fees applicable to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

(ii) To exercise the functions set forth in Article IX of the Code of Procedure, in accordance with the procedures specified therein.

(2) The Listing Committee shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed Ten (10) percent of its total revenues.

2. Other Committees

With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in 1. above, such committee shall be created in accordance with the by-laws by resolution or resolutions adopted by a majority of the whole Nasdaq Board.

E. Stockwatch

The Stockwatch section handles the trading halt functions for The Nasdaq Stock Market and exchange-listed securities traded in the over-the-

counter market (i.e., the third market). Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up will be referred to and conducted by NASDR, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that the NASDR may deem necessary. NASDR staff at all times will have access to all records and files of the Stockwatch function.

© National Association of Securities Dealers, Inc. (NASD), May 22, 1996. All rights reserved.

NASD is a registered service mark of the National Association of Securities Dealers, Inc. Central Registration Depository (CRD), MediaSource, PC Focus, and NASDnet are service marks of the NASD. NAQcess, Nasdaq, Nasdaq National Market, and OTC Bulletin Board are registered service marks of The Nasdaq Stock Market, Inc. Automated Confirmation Transaction (ACT) Service, Fixed Income Pricing System (FIPS), The Nasdaq SmallCap Market, and Small Order Execution System (SOES) are service marks of The Nasdaq Stock Market, Inc. NASD *Notices to Members* is published monthly by the NASD Communication Services Department, Jean Robinson Curtiss, Editor, NASD Communication Services, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-6900. No portion of this publication may be copied, photocopied, or duplicated in any form or by any means, except as described below, without prior written consent of the NASD. Members of the NASD are authorized to photocopy or otherwise duplicate any part of this publication without charge only for internal use by the member and its associated persons. Nonmembers of the NASD may obtain permission to photocopy for internal use through the Copyright Clearance Center (CCC) for a \$3-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923. Annual subscriptions cost \$225; single issues cost \$25. Send a check or money order (payable to the National Association of Securities Dealers, Inc.) to NASD MediaSourceSM, P.O. Box 9403, Gaithersburg, MD 20898-9403, or to phone in an order using American Express, MasterCard, or Visa charge, call (301) 590-6578, Monday to Friday, 9 a.m. to 5 p.m., Eastern Time. Back issues may be ordered by writing NASD, Support Services Department, 1735 K Street, NW, Washington, DC 20006-1500 or by calling (202) 728-8061.