

exchanges and quoted in the OTCBB by NASD members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through January 31, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35168; File No. SR-NASD-94-77]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Granting the Director of Arbitration the Authority to Delegate Duties Under the Code of Arbitration Procedure**

December 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing to amend Section 3 of the Code of Arbitration Procedure<sup>1</sup> to expressly provide that the Director of Arbitration may delegate decision making authority as appropriate. Below is the text of the proposed rule change. Proposed new language is in italics; proposed elections are in brackets.

**Code of Arbitration Procedure**

*Director of Arbitration*

Sec. 3. The Board of Governors of the Association shall appoint a Director of Arbitration ("*Director*") who shall be charged with the performance of all administrative duties and functions in connection with matters submitted for arbitration pursuant to this Code. *The Director* [He] shall be directly

responsible to the National Arbitration Committee and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so. *The duties and functions of the Director may be delegated by the Director, as appropriate. In the event of the incapacitation, resignation, removal, or other permanent or indefinite inability of the Director to perform the duties and responsibilities of the Director, the President or an Executive Vice President of the Association may appoint an interim Director.*

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

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

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

The current provisions of Section 3 of the Code provide for the appointment of a Director of Arbitration by the NASD Board of Governors to perform all administrative duties and functions in connection with matters submitted to the NASD for arbitration. The Director has found it necessary to delegate certain functions of the Director to senior management employees of the NASD's Arbitration Department, especially as a result of the significant growth in the Department's staff and workload. The NASD believes this delegation power is inherent in the authority of the Director to manage the functions of the NASD's Arbitration Department. Nevertheless, the NASD is proposing to amend Section 3 of the Code to expressly provide for such delegation.

The proposed rule change to Section 3 provides that the duties and functions of the Director may be delegated by the Director as appropriate. Further, in the event that the Director is incapacitated, resigns, is removed or is permanently or indefinitely disabled from the performance of the duties and functions of the Director, the proposed rule change provides that the President of

the Association or an Executive Vice President may appoint an interim Director to perform these functions and responsibilities of the Director.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act<sup>2</sup> in that the proposed rule change will protect investors and the public interest by avoiding disruptions and uncertainty about the authority to Act under the Code by permitting the duties and functions of the Director to be delegated by the Director and by permitting certain other NASD officers to appoint an interim Director if certain circumstances render the Director unable to discharge the duties vested in the Director.

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

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

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

The proposed rule change was published for comment by the SEC as part of SR-NASD-93-51 in Securities Exchange Act Release No. 33108 (October 26, 1993), 58 FR 58573 (November 2, 1993). No comments were received by the SEC specifically directed at the proposed amendment to Section 3.

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

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

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

<sup>1</sup> NASD Manual, Code of Arbitration Procedure, (CCH) ¶ 3703.

<sup>2</sup> 15 U.S.C. § 78o-3.

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. 94-107; Notice 1]

#### Excalibur Automobile Corp.; Receipt of Application for Decision of Inconsequential Noncompliance

Excalibur Automobile Corporation (Excalibur) of Milwaukee, Wisconsin, has determined that some of its vehicles fail to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Excalibur has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417)) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

Excalibur manufactured 59 model year 1993, 1994, and 1995 JAC 427 Cobras without automatic restraint systems. These vehicles all contain Type 2, three-point harness active restraint systems.

Excalibur supports its application for inconsequential noncompliance with the following. Excalibur also included a brochure with pictures and a description of the subject vehicles. This brochure is available in the NHTSA docket.

The 59 JAC 427 Cobras that are the subject of this exemption petition all contain Type 2, three-point harness active restraint systems. Automatic restraint systems are required for vehicles produced on or after September 1, 1989. Bringing into compliance with paragraph S4.1.4 of FMVSS 208 the 59 JAC 427 Cobras that are the subject of this exemption petition would be very difficult from an engineering perspective, and whatever feasible solutions may be available, would most likely result in significant expense for Excalibur, a small financially-strapped company.

As set forth below, Excalibur submits that the overall safety risk from noncompliance with paragraph S4.1.4 of FMVSS 208 by the 59 JAC Cobras at issue is inconsequential because of (1) the vehicle's specialized and limited use and small number and (2) Excalibur's belief that Cobra owners have a relatively high level of safety belt use and Excalibur's proposal to boost further Cobra safety belt use by placing a warning label in the vehicle.

#### *1. The Overall Safety Risk From Noncompliance of Excalibur's 59 JAC 427 Cobras With FMVSS 208 Is Inconsequential Given Their Specialized And Limited Use and Small Number*

The JAC 427 Cobra is not an ordinary passenger automobile designed for daily use. It is a classically-styled automobile viewed as a collector's item by automobile purchasers. . . . The JAC 427 Cobra is a convertible which seats two persons, and has a small trunk. As a result, it is not designed to be used as a family's primary passenger vehicle. Instead, the JAC 427 Cobra is typically driven only short distances from an owner's home. Owners of these (sic)

type of automobiles generally drive these automobiles no more than 4000 miles per year.

Excalibur has never planned to produce many JAC 427 Cobras due to the limited capacity of its manufacturing facilities and the nature of its manufacturing process. For example, the highest monthly total of JAC 427 Cobra automobiles ever produced was 17. Only 59 of these automobiles were produced for sale in the U.S. between January 1993 and September 1994, a 21-month period. In 1995, Excalibur's total planned production is only 100-180 JAC 427 Cobras for sale worldwide, or no more than 15 per month. Of the 100-180, only 60% of the JAC 427 Cobras, or 60-108, are proposed for sale in the U.S.

The collector's nature of the JAC 427 Cobra, the low number of miles that these types of vehicles are driven on any consistent basis, and the small number of actual JAC 427 Cobras that do not comply with FMVSS 208 illustrate the overall reduced safety risk of these vehicles, especially when compared to the overall risk posed by the average use of the standard family passenger vehicle. Thus, the total effect of the existence of only 59 JAC 427 noncomplying automobiles—which are meant for weekend pleasure driving—is inconsequential in relation to the overall level of motor vehicle safety in the U.S.

#### *2. The Safety Risk From Noncompliance of Excalibur's 59 JAC 427 Cobras With FMVSS 208 Is Inconsequential Due to Probable Existing Cobra Safety Belt Use and to Excalibur's Proposal To Boost Cobra Safety Belt Use*

The use of safety belts has been shown to significantly reduce injuries and fatalities in automobile crashes. See generally, NHTSA, *Evaluation of the Effectiveness of Occupant Protection—FMVSS 208 Interim Report, June 1992* (hereinafter referred to as "Interim Report"). Use of safety belts has increased dramatically since 1983 due to the enactment of state mandatory safety belt laws and the installation of automatic safety belt systems. By May of 1992, 42 states plus the District of Columbia and Puerto Rico had enacted laws requiring the use of safety belts. Interim Report at v. Safety belt use overall increased nationwide to nearly 59% in late 1991, ranging from 24% in Mississippi to 83% in Hawaii. NHTSA, *Effectiveness of Occupant Protection Systems and Their Use—Report to Congress, January 1993*. Manual safety belt use nationwide reached 56% in 1991, and may be even higher today due