

such expenses exceed \$50,000, is consistent with Section 6(b)(4) of the Act.<sup>6</sup> Section 6(b)(4) requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

The Commission believes that because the funds to pay the legal expenses incurred by the Exchange in defending legal suits are generated, in part, by membership fees, the rule change reflects a reasonable business decision by the membership to shift the financial burden of litigation to the responsible member under certain circumstances. Moreover, as the Exchange's legal expenses must be reasonable and must accrue to at least \$50,000 before a member would be obligated to compensate the Exchange, the Commission believes that the rule change should not provide an undue disincentive to litigation, in so far as it will permit the discovery needed to assess the merits of the members' cases.

The Commission also notes that new Rule 2.24 specifically excludes disciplinary actions brought by the Exchange, other administrative appeals of Exchange actions, as well as any other specific instance where the Board grants a waiver of this rule. The Commission believes that this provision will ensure that members will be able to freely pursue their right to appeal any action brought by the Exchange for violations of its rules.<sup>7</sup>

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to limit the liability of the Exchange and its directors, officers, employees, and agents, to preclude certain types of legal actions by members against such persons individually, and to require members to pay the Exchange's costs of litigation under specified circumstances is consistent with the requirements of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-96-02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

<sup>6</sup> 15 U.S.C. § 78f(b)(4) (1988).

<sup>7</sup> The Commission notes that if the minimum amount in the fee provision were substantially lower it might have a more difficult time concluding that the provision was consistent with Section 6(b)(4). This is because such a lower threshold amount could be found to represent an inequitable allocation of fees to the disadvantage of certain members.

<sup>8</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
*Deputy Secretary.*  
[FR Doc. 96-18172 Filed 7-17-96; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-37424; File No. SR-NASD-96-20]

#### **Self-Regulatory Organizations; Order Granting Temporary Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes in the Structure of the NASD Board of Governors**

July 11, 1996.

On May 28, 1996,<sup>1</sup> the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder.<sup>3</sup> The rule change amends the NASD By-Laws to conform them to the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" ("Delegation Plan").<sup>4</sup>

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37282, June 6, 1996) and by publication in the Federal

<sup>1</sup> On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amends Article VI, Section 5 to clarify that, in a contested election, the term of office of a candidate certified by the National Nominating Committee for inclusion on the ballot for the election of Governors pursuant to Article VI, Section 7(c) would be identical to the term of office of a candidate nominated by the National Nominating Committee pursuant to Article VI, Section 7(c). Amendment No. 1 also amends Article VI, Section 7(a) to clarify that any person elected to the Board of Governors must be nominated or certified by the National Nominating Committee. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated June 4, 1996).

<sup>2</sup> On July 2, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 provides the final report of the NASD membership with respect to the proposed rule change. 2,227 valid ballots were received from NASD members. 2,101 voted to approve the proposed rule change, 117 voted to disapprove the proposed rule change and 9 did not vote.

<sup>3</sup> On July 10, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requests temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> See Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) ("Release 34-37107").

Register (61 FR 29777, June 12, 1996). One comment letter was received. This order grants accelerated approval to the proposed rule change for a period of 120 days.

#### I. Background

In 1995, the NASD Board of Governors ("Board") appointed the Select Committee on Structure and Governance ("Select Committee") to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. In September 1995, the Select Committee recommended, among other things, that the NASD establish two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market ("Nasdaq"). The Select Committee recommended that each subsidiary have an independent Board of Directors with at least 50% public representation and that the NASD remain as parent corporation overseeing the operations of both subsidiaries. The Select Committee recommended that the NASD Board of Governors be composed of a majority of public directors.

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, 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.

On April 11, 1996, the Commission granted temporary approval for a period of 90 days to: (i) Amendments to Article VII of the NASD By-Laws to create a national nominating committee to nominate persons to serve on the Board of Governors and reconstitute the Board as a majority non-industry Board;<sup>5</sup> (ii) NASD Rule 130 providing for the delegation of the authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the Delegation Plan; and (iii) the Delegation Plan.<sup>6</sup> The Delegation Plan sets forth the purposes,

<sup>5</sup> Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) ("Release 34-37106").

<sup>6</sup> Release 34-37107.

functions and governance procedures of the three corporations working together.

The rule change approved today is intended to ensure that the NASD possesses the requisite corporate authority to continue the restructuring necessary to implement the principles articulated in the report of the Select Committee.

## II. Description of Proposed Rule Change

The rule change approved today amends the NASD By-Laws to make the By-Laws consistent with the Delegation Plan granted temporary approval today by the Commission<sup>7</sup> by providing for the creation of a national nominating committee to identify and nominate for election industry and non-industry persons to serve on the Board and by deleting sections and language now unnecessary or inappropriate as a result of the Delegation Plan. Included in the proposed rule change is the deletion of nearly all references to the Districts and local administration, because responsibility for the local administration of regulatory affairs under the Delegation Plan has been assigned to NASD Regulation.<sup>8</sup> The amended By-Laws also 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,"<sup>9</sup> and make various miscellaneous clarifying corrections to the By-Laws. Finally, all references to the NASD "Certificate of Incorporation" are being changed to the "Restated Certificate of Incorporation" to reflect that the Certificate of Incorporation has been amended to be consistent with the changes previously adopted and proposed herein to the By-Laws.

### A. 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, its subsidiaries and their boards of directors.

<sup>7</sup> See Securities Exchange Act Release No. 37425 (July 11, 1996) (granting accelerated approval to amended Delegation Plan for 120 days) ("Release 34-37425").

<sup>8</sup> In recognition of this assignment of 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.

<sup>9</sup> The new version of the *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).

In addition, the definition of "Act" is revised to match the definition in the Delegation Plan, and the definition of "rules of the Corporation" is revised to be consistent with the various references to rules in the reorganized *NASD Manual*.<sup>10</sup>

Finally, the definition of "bank" is reviewed to expand the reference to national banks to include the citation that such banks are included in the definition that are "under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a) \* \* \*."

### B. Applications for Membership

Article III, Section 1(a)(3) is amended to extend to the Nasdaq and NASD Regulation Boards, committee members, officers, and employees protection from liability for action taken within the scope of their authority, except for willful malfeasance. See also Article IV, Sec. 2(a)(2) of the By-Laws.

### C. Affiliated Securities Associations

The NASD has deleted Article V governing the affiliation of other Registered Securities Associations with the NASD. Such affiliations remain authorized by Section 15A of the Act.

### D. Board of Governors

A majority of the changes to the By-Laws affect the powers and authority of the Board of Governors, its size, composition and the manner of its selection. The NASD has added a provision to the By-Laws setting forth the authority of the Corporation to delegate functions, provided that such delegations are not inconsistent with the Delegation Plan.

The NASD also is eliminating the special committee formerly established to take action in case of emergencies or extraordinary market conditions when the full Board is not available. The amended By-Laws vest authority to take action under emergency conditions with the full Board, or with any person or persons designated by the Board.

The amended By-Laws reconstitute the Board as a smaller, majority Non-Industry<sup>11</sup> Board, comprising the Chief

<sup>10</sup> The definition published for member vote in Special Notice to Members 96-35, attached as Exhibit 2 to the proposed rule change, has been modified to eliminate certain rule language that would not have been consistent with the reorganized *NASD Manual*.

<sup>11</sup> The Delegation Plan defines "Non-industry" Governors, Directors or Committee Members as (a) Public Governors; (b) officers and employees of issuers of securities listed on The Nasdaq Stock Market 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-members affiliates (such as a broker or dealer established to (i)

Executive Officer, one or more Non-Industry Governors representative of issuers and investors and not associated with an NASD member, and one or more Industry Governors. The Commission also is granting approval to amendments reducing the minimum size of the Board from 25 to 5.

Another amendment to the By-Laws 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 is intended to ensure that the Board will at all times include full representation of issuers, investors, and the securities industry, with a Non-Industry majority.

Another amendment to the By-Laws provides that, except for the Chief Executive Officer, no Governor may serve more than two consecutive three-year terms except for a Governor that has been appointed to fill a term of less than one year. Such a Governor may serve up to two consecutive terms following the expiration of that Governor's current term. The filling of vacancies cannot be inconsistent with the Delegation Plan.

Consistent with Section I.C. of the Delegation Plan, which described the procedure for the nomination and election of NASD Governors, the By-Laws have been amended to provide that the members of the NASD Board of Governors shall be elected by a plurality of the votes of the members of the NASD that are present in person or represented by proxy at the annual meeting of the NASD and entitled to vote. The Board is further authorized to establish a National Nominating Committee, which will consist of six or more persons meeting qualifications to be established by the Board in conformance with the Delegation Plan,<sup>12</sup> to nominate or certify

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 employees 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. See Release 34-37425, *supra* note 7.

<sup>12</sup> See Release 34-37425, *supra* note 7. The Delegation Plan provides that the National Nominating Committee shall be composed of at least 6 and not more than 9 members, equally balanced between Industry and Non-industry Committee Members (including at least 2 Public Committee Members), with 2 members of the National Nominating Committee selected by NASD, NASD Regulation, and Nasdaq, respectively. 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.

one or more persons for each governorship up for election. Any person nominated or certified for election to the Board must demonstrate to the National Nominating Committee that that person meets the applicable qualifications for the position.

The By-Laws also have been amended to permit members of the Board or any committee of the NASD to participate in a meeting by communications facilities that permit the parties to hear and speak to each other. Participation in a meeting constitutes the person's presence at a meeting. Board members continue to be prohibited from voting by proxy at any meeting.

#### E. Consistency With the Delegation Plan

The By-Laws have been amended in several places to ensure that certain powers of the NASD Board must be exercised in a manner consistent with the requirements of the Delegation Plan. For example, those provisions of the By-Laws granting the Chief Executive Officer *ex-officio* membership in all committees have been deleted as inconsistent with the requirements of the Delegation Plan.

In addition, amendments to the By-Laws provide that determinations of the NASD Board regarding the employment of administrative staff and the establishment of committees shall not be inconsistent with the Delegation Plan.

#### III. Comments Received

As noted above, the Commission received one comment concerning the proposed rule change.<sup>13</sup> The Singer Letter objects to the proposal to require applicants for NASD membership to agree to exculpate the Nasdaq and NASD Regulation Boards, committee members, officers, and employees from liability for action taken within the scope of authority, except for willful malfeasance. The By-Laws would continue to require that applicants exculpate the NASD Board, its committee members, officers, and employees from such liability. The Singer Letter states that "the NASD seeks to obtain unwarranted, virtual, absolute immunity for itself and its staff as the price for NASD membership or registration."<sup>14</sup> The Singer Letter states that the public interest is clearly not served when a self-regulatory organization can insulate itself from wrongdoing except in cases where the misconduct rises to the level of willful

malfeasance. The Singer Letter urges that the scope of exculpation from liability be limited to action taken "while discharging necessary and proper prosecutorial or adjudicatory functions." The Commission notes that this provision is currently a part of the NASD By-Laws, and is not substantively amended by this filing. The Commission also notes that the scope of conduct addressed by the provision is limited to action taken within the scope of the actor's authority. The Commission also notes that the standard proposed by the Singer Letter would subject NASD, NASD Regulation and Nasdaq personnel to personal liability for ordinary negligence in performing regulatory functions required to carry out the purposes of the Act or required to enforce compliance by NASD members and their associated persons with the provisions of the Act.<sup>15</sup> The Commission believes that such liability would have a chilling effect upon the actions of such personnel and would hinder the NASD's ability to discharge its regulatory responsibilities under the Act.<sup>16</sup>

#### IV. Commission Findings

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act<sup>17</sup> in that the restructured organization will: (1) Provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws; (2) provide for the fair representation of members, issuers and

<sup>15</sup> See 15 U.S.C. 78o-3(b) (1)-(2).

<sup>16</sup> See *id.* In addition, the Commission notes that the Delaware General Corporation Law ("DGCL") permits a Delaware corporation such as the NASD to provide its directors and officers with broad protection from liability. The DGCL permits a corporation to either eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty, provided that such provisions do not eliminate or limit the liability of a director for, among other things, (i) Breach of the director's duty of loyalty to the corporation and its stockholders, or (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law. See 8 Del. Code § 102(b)(7). Furthermore, the DGCL permits corporations to indemnify officers against expenses, judgments, fines and settlement amounts reasonably incurred if the officer acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation. See 8 Del. code § 145 (a)-(b).

<sup>17</sup> 15 U.S.C. 78o-3.

investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

The NASD has requested that the Commission approve the proposed rule change on or before July 11, 1996, which is prior to the 30th day following publication of notice of the filing of the proposed rule change in the Federal Register, in order to permit the uninterrupted authorization of those corporate actions necessary to effectuate the Delegation Plan.

Pursuant to Section 19(b)(2) of the Act,<sup>18</sup> the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication in the Federal Register. The proposed rule change will permit the NASD to continue to carry out the functions and organize itself in the manner contemplated by the Delegation Plan, which is intended to enable the NASD to meet its regulatory and business obligations. Because the Commission believes that the proposed rule change facilitates the ability of the NASD to manage its affairs in a manner that enhances its ability to carry out the purposes of the Act or required to enforce compliance by NASD members and their associated persons with the provisions of the Act, the Commission believes that the rule filing should be approved without delay, for a 120 day period.

#### V. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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

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

<sup>13</sup> Letter from Bill Singer, Esq., Singer, Bienenstock, Zamansky, Ogele & Selengut, LLP, to Jonathan G. Katz, Secretary, Commission, dated July 1, 1996 ("Singer Letter").

<sup>14</sup> See Singer Letter, *supra* note 13.

number in the caption above and should be submitted by August 8, 1996.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that SR-NASD-96-20 be, and hereby is, approved effective immediately, for a period of 120 days.

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.*

[FR Doc. 96-18169 Filed 7-17-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37425; File No. SR-NASD-96-29]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and The Nasdaq Stock Market, Inc.**

July 11, 1996.

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 July 2, 1996,<sup>1</sup> 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change for a period of 120 days.

<sup>1</sup> On July 8, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amended the language of proposed new Subsections II.C.4. and III.C.3 of the Delegation Plan to clarify that it is proposed that the NASD Board of Governors have authority to determine to both call for review or not call for review a matter of the subsidiary Board during the 15-day period provided for consideration by the NASD Board.

On July 10, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 requests temporary approval of the proposed rule change for a period of 120 days. See Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

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

The NASD is proposing to amend its rules to: (1) Add new Rule 0130 to the NASD's rules delegating to the subsidiaries of the NASD, NASD Regulation, Inc. ("NASDR") and The Nasdaq Stock Market, Inc. ("Nasdaq"), the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the NASD Board of Governors and approved by the Commission pursuant to its authority under the Act; and (2) adopt a Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Plan") setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

The proposed rule change submitted herein, with exceptions, was previously filed with the Commission in SR-NASD-96-16 and was simultaneously published for comment and approved by the Commission on a temporary basis for a period of 90 days.<sup>2</sup> Release 34-37107 contained the full text of the proposed rule change, with the exception of three amendments thereto. Set forth below are excerpts from the Plan, marked to show the three amendments. Additions to the Plan are in italics; deletions are in brackets.<sup>3</sup>

**Plan of Allocation and Delegation of Functions by NASD to Subsidiaries**

**I. NASD, Inc.**

\* \* \* \* \*

**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 on April of 1997, Governors (except the CEO of NASD) shall be elected by a majority

<sup>2</sup> Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (Release 34-37107).

<sup>3</sup> The Commission is separately approving SR-NASD-96-20, amending the NASD By-Laws consistent with the Plan, for a period of 120 days. See Securities Exchange Act Release No. 37424 (July 11, 1996).

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/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 pursuant to Section 2.b(3) above may be [included on the ballot] *nominated by petition, for the term of office specified by the Board for the vacant governorship*, 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] *may be [certified by the National Nominating Committee and] included on the ballot only if the Committee certifies that the candidate's petitions*