

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the 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 Amex consents, the Commission will:

A. by order approve the 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 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-19 and should be submitted by July 3, 1996.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37281; File No. SR-Amex-96-14]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange Board of Governors**

June 6, 1996.

**I. Introduction**

On April 18, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Articles II, III and XII of the Exchange Constitution relating to the Board of Governors ("Board"). The proposed amendments would permit the appointment of a second Vice-Chairman, allow for the inclusion of the second highest ranking Exchange executive officer on the Board, and permit certain Governors to be eligible for nomination to a third term. Notice of the proposed rule change appeared in the Federal Register on April 29, 1996.<sup>3</sup> No comment letters were received on the proposed rule change. This order approves the Amex's proposal.

**II. Description of Proposal**

**A. Board Position Amendments**

Article II, Section 2 of the Exchange Constitution currently calls for the appointment of one Vice-Chairman from among the Exchange members serving on the Board, and it has been customary over the years to alternate between the trading floor and "upstairs" communities as the source of that Vice-Chairman. Given the importance of both these communities to the Exchange, the Amex believes that it is desirable to be able to have one Vice-Chairman from each constituency. Accordingly, the proposed amendments will permit (but not require the appointment of two member Vice-Chairmen, and will specify that if there are two Vice-Chairmen, one must come from the trading floor and one from upstairs.<sup>4</sup>

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 37138 (April 23, 1996), 61 FR 18765 (April 29, 1996).

<sup>4</sup> Proposed Article II, Section 2 provides that the Board shall elect "one or more" Vice-Chairmen of the Board. The Amex believes that when read together with Article II, Section 3(b), it is clear that there may be only two Vice-Chairmen. Indeed, this approval order only permits the appointment of a maximum of two Vice-Chairmen. The Exchange, however, has represented that it will revise Article II, Section 2 to clarify that a maximum of two Vice-

The Exchange would also like to create a new position of Executive Vice-Chairman, who will be the second highest ranking officer of the Exchange and who will serve as a member of the Board of Governors. The Executive Vice-Chairman would be appointed by the Chairman of the Board, subject to approval by the affirmative vote of a majority of the entire Board. If the Executive Vice-Chairman position is not filled and the Exchange has a President, then the President will serve on the Board. If at any time neither of those offices are filled, then the Chief Executive would be the only non-elected<sup>5</sup> member of the Board.

**B. Third Term Amendment**

It has become apparent to the Exchange that at times the special limitations in the Constitution relating to which kind of Governors can serve third terms at any given time could be a limitation on having the best possible slate of public Governor candidates. Accordingly, it is proposed that the Exchange increase from two to three the maximum number of third term Governors who can be representatives of the public. There is no change to the overall limitation that no more than four third-term Governors may be serving at one time.

**C. Committee Amendments**

The Exchange is also proposing to amend Article XII, Section 2 of the Exchange Constitution, Composition of the Emergency Committee. This Section currently provides that the Emergency Committee is to be composed of the Chairman of the Board of Governors, the Vice-Chairman of the Board, and the three senior members of the Board who are regular, options principal, associate or allied members of the Exchange. The proposed amendment would change the composition of the Committee such that any Executive Vice-Chairman or President would be on the Committee. Moreover, if there are two Vice-Chairmen, both would serve on this Committee.

Finally, the Exchange is proposing to amend Article II, Section 4(a) of the Constitution, Executive Committee, to ensure that if there are two Vice-Chairmen, both are included on the Executive Committee.

Chairmen may be appointed. See Letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy, Amex, to Glen Barrentine, Division of Market Regulation, Commission, dated April 26, 1996.

<sup>5</sup> The term "non-elected" in this context means not elected by the membership. The Chief Executive, or Chairman of the Board, is elected by the Board of Governors. See Amex Constitution, Article II, Section 2.

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

### III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, specifically, with the requirements of Section 6(b).<sup>6</sup> In particular, the Commission believes that the proposal is consistent with Sections 6(b)(3) and 6(b)(5) of the Act, respectively, in that it assures fair representation of exchange members in the selection of its directors and administration of its affairs,<sup>7</sup> and is consistent with the protection of investors and the public and with the maintenance of fair and orderly markets.<sup>8</sup>

More specifically, the Commission finds that the Amex's proposal to permit the appointment of two member Vice-Chairmen, one from the trading floor and one from the upstairs community, serves to codify the Exchange's custom of equal representation between upstairs members and floor members and is, therefore, consistent with the fair representation requirement of Section 6(b)(3).

Regarding the creation of the Executive Vice-Chairman position, the Commission believes that this should permit the Exchange to improve the administration of its affairs, and is thus consistent with Section 6(b)(3).

With respect to increasing from two to three the maximum number of third term Governors who can be representatives of the public, the Commission believes that the proposal appropriately balances the Exchange's competing interests of needing to retain certain governors with special levels of expertise on its Board, while at the same time continuing to promote diversity of Board representation among the different categories of member firms and, more importantly, the public. The Commission notes that the Exchange will continue to have a prohibition against more than four governors serving a third term and that this should ensure continued diversity of viewpoints on the Exchange's Board, while giving the Exchange the flexibility to extend the number of terms of its

public Board members for sound business reasons.

Finally, the Commission believes that the changes to the Emergency Committee and the Executive Committee are appropriate in light of the creation of the Executive Vice-Chairman and additional Vice-Chairman positions. In this regard, the Commission believes that these changes do not substantially alter the composition of these Committees. Accordingly, the Commission believes that the proposal is consistent with the requirements of Sections 6(b)(3) and 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-96-14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37282; File No. SR-NASD-96-20]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes in the Structure of the NASD Board of Governors

June 6, 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 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") 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

<sup>9</sup> 15 U.S.C. § 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<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).

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 the NASD's By-Laws. The text of the proposed rule change is available at the Office of the Secretary, NASD and at the Commission.

#### 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 Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### Background

In 1995, the NASD Board of Governors ("Board") appointed The Select Command 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. The Select Committee reported to the Board at its September 1995 meeting and recommended, among other things, the establishment of 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 and that the NASD remain as parent corporation overseeing the operations of both subsidiaries.

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 Regulations, and final policymaking authority for the association as a whole. The NASD also

<sup>6</sup> 15 U.S.C. § 78f(b).

<sup>7</sup> 15 U.S.C. § 78f(b)(3). Section 6(b)(3) of the Act also provides that one or more directors be representative of issuers and investors and not associated with a member of the exchange or a broker-dealer. Article II, Section 1(a)(2) of the Amex Constitution provides that at least 12 Board members must be representatives of the public. This rule proposal does not change this requirement in the Exchange Constitution.

<sup>8</sup> 15 U.S.C. § 78f(b)(5).