compliance consultants, as appropriate, to conduct periodic reviews and evaluations of the compliance policies and procedures, as well as the operation of the compliance program as a whole. The Compliance Manuals will be promptly updated to reflect any necessary changes resulting from these reviews.

c. Compliance Documentation. SI is in the process of adopting procedures to document, on an ongoing basis, the procedures to be followed by Compliance Department personnel in performing particular functions; the actions to be taken by Compliance Department personnel as a result of following the procedures; and the actions to be taken by Legal and Compliance Department personnel and management to enforce the compliance policies and procedures. These policies will require compliance documentation to be prepared in a manner to facilities regulatory review of the factual background of the transactions or matters at issue, as well as the actions taken by SI's personnel.

d. Compliance Training. SI has commenced, and will continue to conduct, training on a firm-wide and departmental basis to ensure that its employees understand the purposes and functions of the compliance policies and procedures.

e. Professional Conduct Program. SI has developed, and is in the process of adopting, a professional conduct code and supporting infrastructure, including the assignment of senior management and Legal Department personnel to design, implement and oversee SI's professional conduct program (''Professional Conduct Program''). Under the Professional Conduct Program, SI will conduct comprehensive yearly professional conduct training. SI is in the process of implementing employee assistance procedures, that will be administered by third-party vendors and senior Legal Department personnel, to answer employee questions and address grievances. Once the Professional Conduct Program is adopted, SI will conduct periodic review and evaluation of the program with a view to enhancing and strengthening it.

Applicant's Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Mr. Stephens will not be involved in SI's business of providing services to register investment companies. Applicants will develop procedures designed reasonably to assure compliance with this condition.

2. For each to the three fiscal years beginning with the fiscal year ending December 31, 1999, SI's general counsel will certify annually that, after reasonable inquiry, he believes that SI has complied with its compliance procedures and policies in all material respects (and that any known material deviations from these policies and procedures, and any series of like deviations that in the aggregate are material, have been documented in SI's records), and that the procedures and policies continue to be reasonably designed to ensure SI's compliance with the federal securities laws. The certification will be delivered to the Commission to be attention of the Assistant Director, Office of Investment Company Regulation, Division of Investment Management, within 60 days of the end of SI's fiscal year. A copy of the certification will be maintained as part of the permanent records of SI and a copy of each certification will be delivered to the board of directors of each fund for which SI serves as distributor, underwriter, administrator or investment adviser.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–26792 Filed 10–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41971; File No. SR–NASD–99–21]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Create a Dispute Resolution Subsidiary

September 30, 1999.

On April 26, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation''), submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a dispute resolution subsidiary. The proposed rule change was published for comment in the **Federal Register** on June 17, 1999.[3] The Commission received one comment letter on the proposal from the Securities Industry Association (''SIA'').[4] This order approves the proposal.

I. Description of the Proposal

The Association is proposing (i) to create a dispute resolution subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), to handle dispute resolution programs; (ii) to adopt by-laws for the subsidiary; and (iii) to make conforming amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan''), the NASD Regulation By-Laws, and the Rules of the Association.

A. Background

The Association's arbitration and mediation programs were operated by the NASD Arbitration Department until 1996, when those functions were moved to NASD Regulation following a corporate reorganization. This reorganization in part grew out of recommendations of a Select Committee formed by the NASD and made up of individuals with significant experience in the securities industry and NASD governance (''the Rudman Committee'').[5] The Rudman Committee reviewed the Association's arbitration and mediation programs from December 1994 through August 1995. The Rudman Report was issued in September 1995.

In September 1994, the NASD established the Arbitration Policy Task Force, headed by David S. Ruder, former Chairman of the SEC (''the Ruder Task Force''), to study NAD arbitration and recommend improvements. The Ruder Task Force, composed of eight persons with various backgrounds in the area of securities arbitration, met from the Fall of 1994 to January 1996, when its Report was issued.[6]

Both the Rudman Committee and the Ruder Task Force made recommendations that affected the arbitration program. The Rudman Committee recommended that the NASD reorganize as a parent corporation with two relatively autonomous and strong operating subsidiaries, independent of one another. The resulting enterprise would consist of NASD, Inc., as parent, The Nasdaq Stock Market, Inc. (''Nasdaq'') as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41510 (June 10, 1999), 64 FR 32575.

[4] Letter from Stephen G. Sneeringer, Chairman of the Arbitration Committee, SIA, to Jonathan G. Katz, Secretary, Commission, dated July 8, 1999 (''SIA Letter'').

[5] *Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors* (September 1995) (''Rudman Report'').

[6] *Report of the Arbitration Policy Task force to the Board of Governors National Association of Securities Dealers, Inc.* (January 1996) (''Ruder Report'').

one subsidiary to operate Nasdaq, and a new subsidiary, NASD Regulation, Inc., to regulate the broker-dealer members of the NASD.[7] The Ruder Report recommended that the dispute resolution program be housed either in the parent or in NASD Regulation.[8] The Arbitration Department was placed in NASD Regulation in early 1996 based on the recommendation of the Rudman Committee,[9] and the name of the department was changed to the Office of Dispute Resolution (''ODR'') shortly thereafter, to reflect the full range of dispute resolution mechanisms.

The NASD believes that ODR has established credibility as a neutral forum that is fair to all parties and has gained acceptance by investor groups. However, because there are significant differences between the disciplinary role of NASD Regulation and the sponsorship of a neutral forum for the resolution of dispute between members, associated persons, and customers, the NASD believes that creation of a separate dispute resolution entity will further strengthen the independence and credibility of its arbitration and mediation functions. A new dispute resolution subsidiary should benefit from the perception that it is separate and distinct from other NASD entities. The new subsidiary will be subject to the same SEC oversight as other parts of the NASD enterprise, which includes regular inspections by the Commission and the need to file all by-laws and rule changes with the SEC. In addition, the new subsidiary will remain subject to inspections by the General Accounting Office (''GAO''), which performs audits at the request of Congress.

The NASD proposes to call the new subsidiary NASD Dispute Resolution, Inc. Together with NASD Regulation, the two subsidiaries will form the NASD Regulatory and Dispute Resolution Group. Both the NASD directly, and NASD Regulation, indirectly, will be responsible for the actions of NASD Dispute Resolution. Because NASD Dispute Resolution performs its functions through authority delegated by the NASD, the NASD is responsible for proper performance of such functions. Indirectly, NASD Regulation will be responsible for enforcing compliance with decisions rendered by NASD Dispute Resolution concerning NASD members.[10]

Staffing for NASD Dispute Resolution will be the same as ODR, except for the creation of a President position. Certain additional executive positions, if necessary, may be created as well. Many functions of the new subsidiary, such as human resources, legal, finance, communications, administrative services, and technology will be shared with the NASD and other subsidiaries to avoid duplication. The new subsidiary will be charged for the cost of those functions as it presently is.

Funding for the new subsidiary will be handled in much the same way as presently handled for ODR, which is not self supporting. Fees received from parties who use the arbitration and mediation programs are not sufficient to fund the Office's regular actitivies. Rather, as a part of NASD Regulation, ODR shares in the revenue stream of the NASD and its affiliated entities, which includes revenue derived from member assessments, various fees and charges, disciplinary fines, and other sources of income. In return, ODR is charged for services that it receives from the other corporations in the enterprise as described above. Apart from accounting changes to reflect the new subsidiary's status, the funding process for the new subsidiary will be the same as that for ODR. ODR employees will continue in the same positions in the new subsidiary, and the physical offices will not move.

The NASD proposes a five-person Board for NASD Dispute Resolution, consisting of three non-industry and two industry directors, as those terms are defined in Article I of the proposed By-Laws. The Chief Executive Officer of the NASD will be an ex-officio non-voting member of the Board. The non-industry directors would include at least two persons who also are members of the NASD Board of Governors (''NASD Board''), and an additional person knowledgeable in the dispute resolution field. At least one of the non-industry directors also will qualify as a public director, as defined in the By-Laws. One industry director would be a member of the NASD Board; the other would be the President of the new subsidiary. The NASD Board would elect the directors, as is done for the boards of the other subsidiaries.

The procedures currently in place for disciplining members and associated persons for noncompliance with arbitration awards will be largely the same. The Code of Arbitration Procedure (''Code''), in IM–10100, provides that the failure of a member or associated person to comply with an arbitration award obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the NASD, other self-regulatory organizations, or the American Arbitration/Association[11] may be deemed conduct inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110. This language presently applies to awards obtained in the NASD Regulation forum, because that forum applies rules and procedures that are ultimately approved by the NASD. This will also be the case for NASD Dispute Resolution. Enforcement of the Code will continue to be handled by NASD Regulation.

As is the case with actions by NASD Regulation, actions by the NASD Dispute Resolution Board may be referred by that board to the NASD Board, or reviewed by the NASD Board, as provided in the proposed amendments to the Delegation Plan.[12] Thus, the rules of NASD Dispute Resolution will be the rules of the Association, just as rules approved currently by the other subsidiaries and subject to NASD Board review are deemed to be NASD rules. NASD Regulation has formed a working group with representatives from various departments to ensure a smooth transition.

B. Description of Proposed Amendments

The Association proposes to amend the Delegation Plan to add references to the new subsidiary and to move the arbitration and mediation functions from NASD Regulation to NASD Dispute Resolution. Therefore, references to the delegations of authority to the subsidiaries and the rulemaking decisions of the subsidiaries have been amended to include references to NASD Dispute Resolution. As is the case for NASD Regulation and Nasdaq, actions of the new subsidiary Board will be subject to review by the NASD Board, and rule filings will be made by the new subsidiary on behalf of the NASD.

The description of the National Arbitration and Mediation Committee (''NAMC'') in the Delegation Plan has been moved from the section delegating authority to NASD Regulation to a new NASD Dispute Resolution section. A

[7] Rudman Report at R–8.

[8] Ruder Report at 151–52.

[9] Rudman Report at R–8.

[10] *See* Section A.1.f. of the Delegation Plan.

[11] The NASD Regulation Board of Directors recently approved an amendment to this Interpretive Material that would add, ''or other dispute resolution forum selected by the parties.'' *See* Securities Exchange Act Release No. 41339 (April 28, 1999), 64 FR 23887 (May 4, 1999). This proposal was filed as a non-controversial filing. The NASD designated May 17, 1999 as the effective date of the proposal.

[12] the Delegation Plan was amended in 1997, together with related By-Laws changes designed to allow the NASD Board to take action on its own initiative rather than waiting for a subsidiary to act on the matter. *See* Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

change has been made in the NAMC member balancing requirement to provide more flexibility while maintaining at least 50% non-industry membership. The Delegation Plan currently provides that NAMC membership shall be equally balanced between industry and non-industry members. It may be desirable, however, to have an odd number of members on the NAMC to avoid tie votes. Therefore, the provision has been amended to state that the NAMC shall have at least 50% non-industry members. This provides additional flexibility while maintaining a minimum of half non-industry members, in accordance with the spirit of the Delegation Plan.

The Association proposes to amend the NASD Regulation By-Laws to add references to NASD Dispute Resolution in the definitions sections.[13]

Rule 0120(b) will be amended to clarify that the term ''Association'' collectively means the NASD and its subsidiaries that are considered part of the self-regulatory organization: that is, the NASD, NASD Regulation, Nasdaq, and NASD Dispute Resolution.

Rule 10102(a) of the Code of Arbitration procedure will be amended to clarify that the new NASD Dispute Resolution Board will appoint members of the NAMC and name its chair. In addition, Rule 10102(a) will be amended to replace the phrase ''a pool of arbitrators'' with the more accurate phrase ''rosters of neutrals,'' since the current rosters include both arbitrators and mediators (collectively referred to as ''neutrals'').

Rule 10102(b) will be amended to conform to current practice, in which the NAMC recommend to the Board certain rules and procedures to govern the conduct of arbitration and mediation matters, and does not unilaterally make such changes. The rule currently authorizes the NAMC to establish these rules and procedures. In addition, the phrase ''NASD Dispute Resolution'' has been added before ''Board'' to clarify that recommendations will be made to that Board. As noted above, actions of the new subsidiary board will be subject to review by the NASD Board.

Rule 10401 will be amended to replace the phrase ''by the Association'' with regard to designation of the Director of Mediation and replace it with ''by the NASD Dispute Resolution Board,'' and to delete ''Association's'' as a modifier of ''National Arbitration and Mediation Committee.'' Although the NASD and its subsidiaries are collectively referred to as the Association for self-regulatory purposes, the use of ''Association'' in this Rule may cause confusion in light of the new corporate structure and serves no useful purpose in the Rule. The term ''of Arbitration'' will be added after one instance of the word ''Director'' to distinguish it from the Director of Mediation. In addition, the reference to the ''Board of Governors'' has been changed to ''NASD Dispute Resolution Board'' to reflect the new structure.

Rule 10404 will be amended to change the term ''NASD'' to ''Association'' to be more inclusive in this instance because, as described above, the term ''Association'' refers to the entire self-regulatory organization including subsidiaries.

The proposed NASD Dispute Resolution By-Laws are modeled after those of NASD Regulation, with certain modifications, described below, appropriate to the particular functions of NASD Dispute Resolution. For example, NASD Dispute Resolution will not require that a committee other than the NAMC review all rulemaking proposals. Standard provisions allowing for the appointment of an Executive Committee and a Finance committee have been included for flexibility, although it is not immediately expected that such committees will be needed.

Proposed Article IV, Section 4.2 sets the number of Board members at five to eight although, as stated above, the intention initially is to have only five Board members. In addition, the Chief Executive Officer of the NASD will be an ex-officio non-voting member of the Board. Proposed Section 4.3(a) provides that the number of non-industry directors shall equal or exceed the number of industry directors plus the President. This means that the President is treated as an industry director for this purpose. The other industry director and at least two of the non-industry directors also will be sitting members of the NASD Board. This overlapping membership provides stability and uniformity among the corporations. At least one of the non-industry directors also will qualify as a public director. The proposed By-Laws define ''Public Director'' as a director who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, Nasdaq, or NASD Dispute Resolution. The By-Laws define ''Non-Industry Director'' as a director (excluding the President) who is (1) a public director or public committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an industry director or industry committee member.

A minor modification was made to the standard terminology in Section 4.13(h) to clarify that the Board may appoint a non-director to a committee, because this power is implied but not specifically stated in the preceding paragraphs of Section 4.13.

II. Comments

The Commission received one comment letter from the SIA,[14] which opposed the proposed rule change. The SIA disagreed with (i) the proposed composition of the NASD Dispute Resolution Board; (ii) the proposed composition of the NAMC; and (iii) the manner in which fees will be imposed by NASD Dispute Resolution.

The SIA had three concerns about the composition of the NASD Dispute Resolution Board. First the SIA stated that industry and non-industry representation should be equal. Second, the SIA noted that it is inappropriate to consider the president of NASD Dispute Resolution as an industry representative. Third, the SIA stated that the proposed compositional breakdown might permit the NASD Dispute Resolution Board to be dominated by claimants' lawyers. The SIA recommended that the Commission exclude from the definition of Non-Industry ''anyone who provides professional legal services to investor-claimants and whose revenues in that regard constitute more than 20% of his or her gross annual revenue.''[15]

Similarly, the SIA expressed concern about the proposed composition of the NAMC. It stated its position that industry and non-industry representation on the NAMC should be equal rather than at least 50 percent non-industry. The SIA stated that the ''amorphous concern that they may be a tie vote * * * does not outweigh the more paramount concern that the representation on the NAMC be truly balanced between Industry and Non-Industry representatives.''[16]

In addition to the composition of the NAMC and the NASD Dispute Resolution Board, the SIA commented on the manner in which fees will be imposed under the proposed rule change. The SIA objected to the dichotomy between fees affecting members and those affecting non-members. Under the proposed rule change, the NASD Board must ratify any rule change adopted by the NASD

[13] The NASD also intends to review the NASD and Nasdaq By-Laws and other corporate governance documents to identify other appropriate amendments recognizing the formation of NASD Dispute Resolution.

[14] *See supra*, note 4.

[15] SIA Letter at 4.

[16] SIA Letter at 4–5.

Dispute Resolution Board that imposes fees or other charges on person or entities other than NASD members. Rule changes that impose fees on NASD members do not require NASD Board ratification. The SIA stated that industry participants ''should have the opportunity to participate in critical decisions that will impact their business and their bottom line—such as fee increases related to the arbitration system.'' [17]

NASD Regulation responded to the SIA's concerns about the proposed composition of the NASD Dispute Resolution Board, the proposed composition of the NAMC, and the manner in which fees will be imposed by NASD Dispute Resolution.[18] First, with respect to the composition of the NASD Dispute Resolution Board, NASD Regulation noted that this proposal is consistent with NASD Regulation's bylaws, which require a majority of non-industry members on its Board and its President and Nasdaq's President are also counted as industry participants for compositional and quorum requirements.[19] Second, with respect to the composition of the NAMC, NASD Regulation noted that the NAMC's recommendations are only advisory and that rule changes and major policy changes must be presented to the NASD Dispute Resolution Board for final approval.[20] Third, with respect to NASD Dispute Resolution's authority to impose fees on NASD members without prior review and ratification by the NASD Board, NASD Regulation noted that fee proposals must be submitted for Commission review and that the NASD may, on its own initiative, review any action of its subsidiaries.[21]

III. Discussion

The Commission finds that the proposed rule change is consistent with section 15A(b) of the Act [22] in general and furthers the objectives of section 15A(b)(6) [23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[24] Specifically, the Commission believes that separating the dispute resolution role from the disciplinary role of NASD Regulation will result in a more neutral and independent forum for the resolution of disputes between members, associated persons, and customers. The Commission also expects the NASD to ensure that NASD Dispute Resolution is adequately funded and able to fulfill its responsibilities.

In its comment letter, the SIA stated that industry and non-industry representation on the NASD Dispute Resolution Board and the NAMC should be equal and that the President of NASD Dispute Resolution should not be considered an industry representative. The Commission notes that NASD Dispute Resolution's Board structure is modeled after NASD Regulation's structure. Nasdaq also requires a majority of non-industry directors on its Board. Moreover, the Presidents of both NASD Regulation and Nasdaq are counted as industry participants for board composition and quorum requirements. The Commission believes that it is reasonable to extend this structure to NASD Dispute Resolution.

The SIA also stated that the NASD Dispute Resolution Board may include too many claimants' lawyers, thus permitting domination by a single NASD Dispute Resolution constituency. The Commission disagrees, noting that at least two of the non-industry directors will come from the NASD Board. As characterized by the SIA in its comment letter, the current non-industry members of the NASD Board are senior executives from major corporations with no particular affiliation with the securities industry. Moreover, if NASD Dispute Resolution has a five member Board, only one non-industry director may be chosen from outside the NASD Board. While that director should be knowledgeable in the dispute resolution field, the universe of potential candidates is not limited to claimants' lawyers. Indeed, it is likely that the remaining non-industry position would be filled by a practicing arbitrator, a mediator, or an academic. Accordingly, the Commission does not believe that there is an undue risk that the NASD Dispute Resolution Board will be dominated by an single constituency of the new subsidiary.

The SIA also stated that the NASD Board should be required to ratify rule changes adopted by the NASD Dispute Resolution Board if the rule change imposes fees or other charges on NASD members as well as those affecting non-members. The Commission notes that rule changes by the NASD Regulation and Nasdaq Boards imposing fees or other charges on NASD members do not require ratification by the NASD Board. The Commission also notes that fee proposals must be submitted for Commission review under Rule 19b–4 under the Act. In addition, any member of the NASD Board may call an action of a subsidiary for review at the next NASD Board meeting following the subsidiary's action. The Commission believes these measures provide an adequate safeguard against unreasonable fees being levied against NASD members.

Finally, the Association represents that funding for the new subsidiary will be handled in much the same way as funding for ODR was accomplished. The new subsidiary will share in the revenue stream of the NASD and its affiliated entities, which includes revenue derived from member assessments, various fees and charges, disciplinary fines, and other sources of income. As the new subsidiary is implemented, we expect the NASD to commit to ensuring that NASD Dispute Resolution continues to be properly funded to carry out all its responsibilities.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASD–99–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–26793 Filed 10–13–99; 8:45 am]

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[17] SIA Letter at 5.

[18] Letter from Jean I. Feeney, Assistant General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Commission, dated August 11, 1999.

[19] *Id.* at 2.

[20] *Id.* at 4.

[21] *Id.*

[22] 15 U.S.C. 78*o*–3(b).

[23] 15 U.S.C. 78*o*–3(b)(6).

[24] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3220]

State of Florida; Amendment #1

The above-numbered declaration is hereby amended to include Marion County, Florida as a contiguous county as a result of damages caused by Hurricane Floyd that occurred September 13–15, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 26, 1999 and for economic injury the deadline is June 27, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)