

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55495; File No. SR-NASD-2007-023)

March 20, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes to Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 19, 2007, the National Association of Securities Dealers, Inc. (“NASD”) 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 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

NASD is proposing to amend the By-Laws of NASD (“NASD By-Laws”) to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”). The proposed rule change also would make limited conforming changes to the By-Laws of NASD Regulation, Inc. (“NASD Regulation By-Laws”).

The text of the proposed rule change is available on the NASD’s Web site (<http://www.nasd.com>), at the principal office of NASD, and at the Commission’s Public Reference Room. The text of Exhibit 5 of the proposed rule change is also available on the Commission’s Web site (<http://www.sec.gov>).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, 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. 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

1. Purpose

Background and Reasons for the Transaction

The securities industry—both domestically and internationally—is in the midst of dramatic change. As the industry changes, it has become clear that the self-regulatory organization (“SRO”) model must be adapted to ensure efficient and effective regulation. At the moment, both NASD and NYSE Regulation oversee the activities of U.S.-based broker-dealers doing business with the public, approximately 170 of which are regulated by both organizations. The result is a duplicative, sometimes conflicting system that makes inefficient use of resources and, as such, can be detrimental to the ultimate goal of investor protection.

NASD has long supported the idea of one SRO having responsibility for all member firm regulation.³ At the same time, the SEC, Congress, securities firms, and independent observers have long encouraged greater efficiencies, clarity and cost savings in the regulation of America’s

³ See NASD’s comment letter dated March 15, 2005 in response to the SEC’s Concept Release Concerning Self-Regulation, Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (File No. S7-40-04).

financial markets. For these reasons, NASD and NYSE Regulation joined together proactively to design a system that would better meet the needs of today’s investors and securities firms.

With the support and encouragement of the SEC, NASD and NYSE Group, Inc. (“NYSE Group”) representatives began meeting in June 2006 to discuss options for changes to the self-regulatory system. A determination was made that the scope of the discussions should be limited to eliminating redundant member regulation and not to combine the market regulatory responsibilities of NASD and NYSE Regulation.

On November 28, 2006, NASD and the NYSE Group announced the plan to consolidate their member regulation operations into a combined organization that will be the sole U.S. private-sector provider of member firm regulation for securities firms that do business with the public (the “Transaction”).⁴ This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

The goals of the consolidation plan are to:

- establish a new organization that will be the single SRO for all securities firms doing business with the public in the U.S.;
- build and sustain the confidence critical to the operation of vibrant capital markets;
- increase efficient, effective, and consistent regulation of securities firms;

⁴ At the closing of the Transaction, NASD will adopt a new corporate name. The proposed rule change refers to the newly named entity as the “New SRO.”

- provide cost savings to securities firms of all sizes; and
- strengthen investor protection and market integrity.

None of NASD's current functions and activities will be eliminated as a result of the Transaction. The new organization will be responsible for:

- regulatory oversight of all securities firms that do business with the public;
- professional training, testing and licensing of registered persons;
- arbitration and mediation;
- market regulation by contract for The Nasdaq Stock Market, Inc. ("Nasdaq"), the American Stock Exchange LLC, and the International Securities Exchange, LLC; and
- industry utilities, such as Trade Reporting Facilities and other over-the-counter operations.

The consolidation plan addresses key issues raised in the SEC's 2004 Concept Release Concerning Self-Regulation: (1) the inherent conflicts of interest between SRO regulatory operations and members, market operations, issuers and stockholders; (2) the costs and inefficiencies of multiple SROs, arising from multiple SRO rulebooks, inspection regimes and staff; and (3) the funding SROs have available for regulatory operations and the manner in which SROs allocate revenue to regulatory operations.⁵

The closing of the Transaction and the consolidation of the member firm regulatory functions of the two organizations is subject to the SEC's approval of this proposed rule change, the execution of definitive agreements between NASD and NYSE Group and obtaining certain

⁵ See supra note 3.

additional regulatory approvals.⁶

Composition of the New SRO Board of Governors during the Transitional Period

The proposed rule change will implement the governance changes at the combined organization, including a Board structure that balances public and industry representation, and designates certain governor seats to represent member firms of various sizes. As further described below, the new governance structure guarantees industry participation that provides for fair and balanced member representation on the Board.

For a transitional period commencing on the date of closing of the Transaction and ending on the third anniversary of the date of closing (the “Transitional Period”), the New SRO Board of Governors (“New SRO Board”) will consist of 23 governors as follows: (1) eleven of the governors will be “Public Governors”; (2) ten of the governors will be “Industry Governors”; and (3) two of the governors will initially be Richard G. Ketchum, Chief Executive Officer (“CEO”) of NYSE Regulation and Mary L. Schapiro, CEO of NASD. Mr. Ketchum will serve as Non-Executive Chairman of the New SRO for a term of three years. Ms. Schapiro will serve as CEO of the New SRO.

The eleven Public Governors will have no material business relationship with a broker or dealer or an SRO registered under the Exchange Act.

Of the ten Industry Governors, (1) three will be registered with a member that employs

⁶ On March 7, 2007, NASD and NYSE Group filed notification reports with the Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The waiting period for such a filing will terminate 30 calendar days after the filing, unless the waiting period is extended. NASD believes that the completion of the Transaction will not violate the antitrust laws. NASD also has received a favorable ruling by the Internal Revenue Service that the Transaction will not affect the tax-exempt status of NASD or NASD Regulation. NASD and NYSE Group will seek to satisfy all regulatory filing obligations and observe any required waiting periods prior to the completion of the Transaction.

500 or more registered persons (the “Large Firm Governors”); (2) one will be registered with a member that employs at least 151 and no more than 499 registered persons (the “Mid-Size Firm Governor”); (3) three will be registered with a member that employs at least one and no more than 150 registered persons (the “Small Firm Governors”); (4) one will be associated with a floor member of the New York Stock Exchange (the “Floor Member Governor”); (5) one will be associated with an independent dealer or insurance affiliate (the “Independent Dealer/Insurance Affiliate Governor”); and (6) one will be associated with an investment company affiliate (the “Investment Company Affiliate Governor”).

The Industry Governors and Public Governors will be appointed or nominated during the Transitional Period as follows:

- The three Small Firm Governors will be nominated by the NASD Board and elected by members that have at least one and no more than 150 registered persons; provided that members of that size also can nominate such candidates.
- The one Mid-Size Firm Governor will be nominated jointly by the Board of Directors of NYSE Group (“NYSE Group Board”) and the NASD Board and elected by members that have at least 151 and no more than 499 registered persons; provided that members of that size also can nominate such candidates.
- The three Large Firm Governors will be nominated by the NYSE Group Board and elected by members that have 500 or more registered persons; provided that members of that size also can nominate such candidates.
- Five Public Governors will be appointed by the NYSE Group Board.
- Five Public Governors will be appointed by the NASD Board.
- One Public Governor will be appointed jointly by the NYSE Group Board and the

NASD Board.

- The one Floor Member Governor will be appointed by the NYSE Group Board.
- The one Independent Dealer/Insurance Affiliate Governor will be appointed by the NASD Board.
- The one Investment Company Affiliate Governor will be appointed jointly by the NYSE Group Board and the NASD Board.

Effective as of closing of the Transaction, the NYSE Group Board and the NASD Board in office prior to the closing will appoint the Public Governors and Industry Governors they, either individually or jointly, have the power to appoint. The Public Governors will hold office for the Transitional Period. The three Large Firm Governors, three Small Firm Governors and one Mid-Size Governor will be elected as Governors at the first annual meeting of members following the closing, which is expected to be held within ninety days after closing of the Transaction and will hold office until the first annual meeting of members following the Transitional Period. During the interim period from closing of the Transaction until the annual meeting, these seven seats will be filled by three interim Industry Governors appointed by the NASD Board prior to the closing of the Transaction from industry governors currently on the NASD Board, three interim Industry Governors appointed by the NYSE Group Board and one interim Industry Governor jointly appointed by the NYSE Group Board and the NASD Board prior to the closing of the Transaction.

As a result of the NASD By-Law amendments, members will no longer have the ability to vote for all New SRO Board candidates in elections, but will have an opportunity to vote on designated seats on the New SRO Board. Specifically, firms will vote for industry nominees that are similar in size to their own firm. This means that small firms and large firms will vote for

candidates running for the seats reserved for their firm size and the mid-sized firms will likewise vote for the mid-sized firm seat. All other New SRO Board seats will be appointed as described above. All members will continue to have the ability to vote on any future amendments to the New SRO By-Laws, as well as in district elections.

The New SRO Board will have a Governor who will preside over executive sessions of the New SRO Board in the event the Non-Executive Chairman is recused (“Lead Governor”). The Lead Governor will be selected by the New SRO Board, after consultation with the CEO. The Board, the CEO, the Non-Executive Chairman and the Lead Governor will have the authority to call meetings of the New SRO Board. Both the CEO and Non-Executive Chairman, and for matters from which the CEO and Non-Executive Chairman are recused from considering, the Lead Governor, will have the authority to place items on the New SRO Board agendas.

Governor Vacancies during the Transitional Period

In the event of a vacancy in the governor position held by the CEO of NYSE Regulation during the Transitional Period, the then CEO of NYSE Regulation will serve as a governor for the remainder of the Transitional Period. If the CEO of NYSE Regulation as of closing of the Transaction ceases to occupy the office of Non-Executive Chairman for any reason during the Transitional Period, then his successor as Non-Executive Chairman shall be selected by and from a committee comprised of the Governors that were appointed or nominated by the NYSE Group Board, with the exception that those Governors that also serve as NYSE Group directors may not become Non-Executive Chairman nor may his successor as CEO of NYSE Regulation become Non-Executive Chairman.

In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor, or the Small Firm Governors during the Transitional Period, such vacancy shall only

be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NYSE Group Board in the case of a Large Firm Governor vacancy; such vacancy shall only be filled by the Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee in the case of a Mid-Size Firm Governor vacancy; or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NASD Board in the case of a Small Firm Governor vacancy. In the event the remaining term of office of any such governor is more than twelve months, nominations shall be made as set forth above, but such vacancy will be filled by the New SRO members entitled to vote on such governor position at a meeting of such members called to fill the vacancy.

In the event of any vacancy among the Floor Member Governor, the Investment Company Affiliate Governor or the Independent Dealer/Insurance Affiliate Governor during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NYSE Group Board in the case of a Floor Member Governor vacancy; such vacancy shall only be filled by the New SRO Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee in the case of an Investment Company Affiliate Governor vacancy; or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of other Governors appointed or nominated by the NASD Board in the case of an Independent Dealer/Insurance Affiliate Governor vacancy.

In the event of any vacancy among those Public Governors appointed by the NYSE Group

Board, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board composed of the other Governors appointed or nominated by the NYSE Group Board. In the event of any vacancy among those Public Governors appointed by the NASD Board, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, a committee of the New SRO Board comprised of the other Governors appointed or nominated by the NASD Board. In the event of any vacancy of the Public Governor position jointly appointed by the NYSE Group Board and the NASD Board, such vacancy shall only be filled by the New SRO Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee.

Composition of the New SRO Board after the Transitional Period

Upon the expiration of the Transitional Period, the term of office of the CEO of NYSE Regulation as a member of the New SRO Board will automatically terminate and the authorized number of members of the New SRO Board will be reduced by one.⁷

As of the first annual meeting of members following the Transitional Period, the Large Firm Governors, the Mid-Size Firm Governor and the Small Firm Governors will be elected into three classes. The composition of the classes will be arranged as follows:

- the first class, being comprised of one Large Firm Governor and one Small Firm Governor, will be elected for a term of office expiring at the first succeeding annual meeting of members;

⁷ Under Article VII, Section 4 of the New SRO By-Laws (Composition and Qualification of the Board), the total number of Governors is determined by the Board of Governors, with such number being no fewer than 16 nor more than 25 Governors. The number of Public Governors must exceed the number of Industry Governors.

- the second class, being comprised of one Large Firm Governor, one Mid-Size Firm Governor and one Small Firm Governor, will be elected for a term of office expiring at the second succeeding annual meeting of members; and
- the third class, being comprised of one Large Firm Governor and one Small Firm Governor, will be elected for a term of office expiring at the third succeeding annual meeting of members.

While these classes are designed to ensure staggered board seats, at no time will there be less than ten Industry Governor positions on the New SRO Board. At each annual election following the first annual meeting of members after the Transitional Period, Large Firm Governors, Small Firm Governors, and Mid-Size Firm Governors will be elected for a term of three years to replace those whose terms expire.

As of the first annual meeting of members following the Transitional Period, the Public Governors, the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor, and the Investment Company Affiliate Governor (the “Appointed Governors”) will be divided by the New SRO Board into three classes, as equal in number as possible, with the first class holding office until the first succeeding annual meeting of members, the second class holding office until the second succeeding annual meeting of members, and the third class holding office until the third succeeding annual meeting of members. Each class will initially contain as equivalent a number as possible of Appointed Governors who were members of the New SRO Board appointed or nominated by the NYSE Group Board or are successors to such governor positions, on the one hand, and Appointed Governors who were members of the New SRO Board appointed or nominated by the NASD Board or are successors to such governor positions, on the other hand, to the extent the New SRO Board determines such persons are to remain

Governors after the Transitional Period. At each annual election following the first annual meeting of members following the Transitional Period, Appointed Governors will be appointed by the New SRO Board for a term of three years to replace those whose terms expire.

Role and Composition of the Nominating Committee

The Nominating Committee will be a committee of the New SRO Board and will replace the current National Nominating Committee. For the first annual meeting following the closing of the Transaction, nominations for the seven elected industry seats will not be made by the Nominating Committee, but instead by the NASD Board and the NYSE Group Board as constituted prior to the closing of the Transaction. In addition, prior to the closing, the NASD Board and the NYSE Group Board will identify and appoint persons for the eleven public seats and three remaining industry seats.

During the Transitional Period, the Nominating Committee will be responsible solely for nominating persons to fill vacancies in governor seats for which the full New SRO Board has the authority to fill. Following the Transitional Period, the Nominating Committee will be responsible for nominating persons for appointment or election to the New SRO Board, as well as nominating persons to fill vacancies in appointed or elected governor seats.

During the Transitional Period, members of the Nominating Committee will be appointed jointly by the New SRO CEO and the CEO of NYSE Regulation as of closing of the Transaction (or his duly appointed successor as Chair of the New SRO Board), subject to ratification of the appointees by the New SRO Board. Following the Transitional Period, the composition of the Nominating Committee will be determined by the New SRO Board. At all times, the number of Public Governors on the Nominating Committee must equal or exceed the number of Industry Governors on the Nominating Committee. In addition, the Nominating

Committee must at all times be comprised of a number of governors that is a minority of the entire New SRO Board. The New SRO CEO may not be a member of the Nominating Committee.

Proposed Changes and Comparison to Current NASD By-Laws

The following chart summarizes the material proposed changes as compared to the current NASD By-Laws and the timing of their effectiveness. The following is only a summary; the text of the proposed rule change is available on the NASD’s Web site (<http://www.nasd.com>), at the principal office of NASD, and at the Commission’s Public Reference Room. The text of Exhibit 5 of the proposed rule change is also available on the Commission’s Web site (<http://www.sec.gov>).

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
Composition and Qualification of the Board	The Board consists of no fewer than 15 nor more than 25 Governors, comprising (i) the Chief Executive Officer of the NASD, (ii) if the Board of Governors determines, from time to time, in its sole discretion, that the appointment of a second officer of the NASD to the Board of Governors is advisable, a second officer of the NASD, (iii) the President of NASD Regulation, (iv) the Chair of the National Adjudicatory Council and (v) no fewer than 12 and no more than 22 Governors elected by the members of	As of Closing, and for the Transitional Period, the Board consists of 23 authorized members, consisting of (i) the Chief Executive Officer of the NASD, (ii) the Chief Executive Officer of NYSE Regulation, Inc., (iii) eleven Public Governors, (iv) a Floor Member Governor, an Independent Dealer/ Insurance Affiliate Governor and an Investment Company Affiliate Governor and (v) three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm	Same as By-Laws for the Transitional Period, except that: (i) the Chief Executive Officer of NYSE Regulation, Inc. is no longer a Governor; (ii) the total number of Governors is determined by the Board of Governors, with such number being no fewer than 16, nor more than 25 and (iii) the number of Public Governors is determined by the Board of Governors, provided such number must exceed the number of Industry Governors.

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
	<p>the NASD. The Governors elected by the members of the NASD include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, a representative of a national retail firm, a representative of a regional retail or independent financial planning member firm, a representative of a firm that provides clearing services to other NASD members, and a representative of an NASD member having not more than 150 registered persons. The number of Non-Industry Governors must exceed the number of Industry Governors. If the number of Industry and Non-Industry Governors is 13–15, the Board must include at least four Public Governors. If the number of Industry and Non-Industry Governors is 16–17, the Board must include at least five Public Governors. If the number of Industry and Non-Industry Governors is 18–23, the Board must include at least six Public Governors.</p>	<p>Governors; provided, however that the Board will not include such Small Firm Governors, Mid-Size Firm Governor or Large Firm Governors, but rather will include three persons, who immediately prior to the Closing are Industry Governors, selected by the Board in office prior to the Closing, three persons, who immediately prior to the Closing qualified as Industry Governors pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc., and one person, who immediately prior to the Closing qualified as an Industry Governor pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly, until the election of such Small Firm Governors, Mid-Size Firm Governor and Large Firm Governors at the first annual meeting of members following</p>	

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
Term of Office of Governors	<p>The Chief Executive Officer and, if appointed, the second officer of the NASD, and the President of NASD Regulation serve as Governors until a successor is elected, or until death, resignation or removal.</p> <p>The Chair of the National Adjudicatory Council serves as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal.</p> <p>The Governors elected by the members of the NASD are divided into three</p>	<p>the Closing. [NOTE: To allow for the possibility of a contested election, the nominees for the Small Firm Governor, Mid-Size Firm Governor or Large Firm Governor will be voted upon at an annual meeting of members which shall be held as soon as practicable after the closing of the Transaction and is expected to be held within ninety days of the closing of the Transaction.]</p> <p>The Chief Executive Officer serves as a Governor until a successor is elected, or until death, resignation or removal.</p> <p>The Chief Executive Officer of NYSE Regulation, Inc. as of Closing serves as a Governor during the Transitional Period, until death, resignation or removal.</p> <p>Effective as of Closing, the Board of Directors of NYSE Group, Inc. appoints the NYSE Public Governors, the Board in office prior to</p>	<p>The Chief Executive Officer serves as a Governor until a successor is elected, or until death, resignation or removal.</p> <p>Public Governors and the Floor Member Governor, the Independent Dealer /Insurance Affiliate Governor and the Investment Company Affiliate Governor (the “Appointed Governors”) are appointed by the Board.</p> <p>As of the first annual meeting of members following the Transitional Period, the</p>

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	<p>classes and hold office for a term of no more than three years, such term being fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal.</p>	<p>the Closing appoints the NASD Public Governors and the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing jointly appoint the Joint Public Governor.</p> <p>Effective as of Closing, the Board of Directors of NYSE Group, Inc. appoints the Floor Member Governor, the Board of Governors in office prior to the Closing appoints the Independent Dealer/Insurance Affiliate Governor and the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly appoint the Investment Company Affiliate Governor.</p> <p>The Public Governors and the Floor Member Governor, the Investment Company Affiliate Governor and the Independent Dealer/Insurance Affiliate Governor appointed in accordance with the preceding paragraphs hold office</p>	<p>Appointed Governors are divided by the Board into three classes, as equal in number as possible, with the first class holding office until the first succeeding annual meeting of members, the second class holding office until the second succeeding meeting of members and the third class holding office until the third succeeding annual meeting of members, or until a successor is duly appointed and qualified, or until death, resignation, disqualification or removal. Each class initially contains as equivalent a number as possible of Appointed Governors who were members of the NYSE Group Committee during the Transitional Period or are successors to such Governor positions, on the one hand, and Appointed Governors who were members of the NASD Group Committee during the Transitional Period or are successors to such Governor positions, on the other hand, to the extent the Board</p>

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		<p>for the Transitional Period, or until death, resignation, disqualification or removal.</p>	<p>determines such persons are to remain Governors after the Transitional Period. At each annual election following the first annual meeting of members following the Transitional Period, Appointed Governors are appointed by the Board for a term of three years to replace those whose terms expire.</p>
		<p>Three Large Firm Governors, three Small Firm Governors and one Mid-Size Governor are elected as Governors at the first annual meeting of members following the Closing (the “Initial Member Elected Governors”). The Initial Member Elected Governors hold office until the first annual meeting of members following the Transitional Period, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal.</p>	<p>As of the first annual meeting of members following the Transitional Period, the Large Firm Governors, the Mid-Size Firm Governor and the Small Firm Governors are divided into three classes, as equal in number as possible, with the first class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the first succeeding annual meeting of members, the second class, being comprised of one Large Firm Governor, one Mid-Size Firm Governor and one Small Firm Governor, holding office until the second succeeding annual meeting of members and</p>
		<p>Upon the expiration of the Transitional Period, the term of office of the Chief Executive Officer of NYSE Regulation, Inc. as a member of the Board automatically, and without any further action, terminates, such person no longer is a member of the Board and the authorized number of members of</p>	

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
Filling of Vacancies	If an elected Governor position becomes vacant, whether because of death, disability, disqualification, removal or resignation, the National Nominating Committee nominates, and the Board elects by majority vote of the remaining Governors then in office, a person satisfying the classification (Industry, Non-Industry or Public Governor) for the governorship to fill such vacancy, except that if the remaining term of office	<p>the Board automatically is reduced by one.</p> <p>In the event the Chief Executive Officer of NYSE Regulation, Inc. as of Closing no longer serves as a Governor during the Transitional Period, the then Chief Executive Officer of NYSE Regulation, Inc. serves as a Governor for the remainder of the Transitional Period, until death, resignation or removal.</p> <p>In the event of any vacancy among the</p>	<p>the third class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the third succeeding annual meeting of members, or until a successor is duly elected and qualified, or until death, resignation, disqualification or removal. At each annual election following the first annual meeting of members following the Transitional Period, Large Firm Governors, Small Firm Governors and the Mid-Size Firm Governor are elected for a term of three years to replace those whose terms expire.</p> <p>In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors, such vacancy is only filled by the Large Firm Governor Committee in the case of a Large Firm Governor vacancy, the Board in the case of a Mid-Size Firm Governor vacancy or the Small Firm Governor Committee in the case of a Small Firm Governor vacancy; provided,</p>

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	<p>for the vacant Governor position is not more than six months, no replacement is required. If the remaining term of office for the vacant Governor position is more than one year, the Governor elected by the Board to fill such position stands for election in the next annual election.</p>	<p>NYSE Public Governors, the Joint Public Governor or NASD Public Governors during the Transitional Period, such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NYSE Group Committee in the case of a vacant NYSE Public Governor position, such vacancy is only filled by the Board, and nominations for persons to fill such vacancy are made by the Nominating Committee, in the case of a vacant Joint Public Governor position or such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NASD Group Committee in the case of a vacant NASD Public Governor position.</p>	<p>however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, such vacancy is filled by the members of the New SRO entitled to vote thereon at a meeting thereof convened to vote thereon.</p> <p>All other vacancies are filled by the Board.</p>
		<p>In the event of any vacancy among the Floor Member Governor, the Investment Company Affiliate Governor or the Independent Dealer/Insurance Affiliate Governor</p>	

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
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during the Transitional Period, such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NYSE Group Committee in the case of a Floor Member Governor vacancy, such vacancy is only filled by the Board, and nominations for persons to fill such vacancy are made by the Nominating Committee, in the case of an Investment Company Affiliate Governor vacancy or such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NASD Group Committee in the case of an Independent Dealer/Insurance Affiliate Governor vacancy.

In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors during the Transitional Period, such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NYSE

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
Nominations	The National Nominating Committee, which is not a committee of the Board,	<p>Group Governor Committee in the case of a Large Firm Governor vacancy, such vacancy is only filled by the Board, and nominations for persons to fill such vacancy are made by the Nominating Committee, in the case of the Mid-Size Firm Governor vacancy or such vacancy is only filled by, and nominations for persons to fill such vacancy are made by, the NASD Governor Committee in the case of a Small Firm Governor vacancy: provided, however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, nominations shall be made as set forth above in this paragraph, but such vacancy is filled by the members of the New SRO entitled to vote thereon at a meeting thereof convened to vote thereon.</p> <p>In the case of the first annual meeting of members following the</p>	The Nominating Committee, which is a committee of the Board,

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
	<p>nominates and, in the event of a contested election, may support: Industry, Non-Industry and Public Governors for each vacant or new Governor position on the NASD Board for election by the membership; Industry, Non-Industry and Public Directors for each vacant or new position on the NASD Regulation Board and the NASD Dispute Resolution Board for election by the stockholder; and Industry, Non-Industry, and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board.</p>	<p>Closing, nominations are by the Board of Directors of NYSE Group, Inc. with respect to Large Firm Governors, jointly by the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing with respect to the Mid-Size Firm Governor and by the Board in office prior to the Closing with respect to Small Firm Governors.</p>	<p>nominates and, in the event of a contested election, may support: Large Firm, Mid-Size Firm, Small Firm, Public, Floor Member, Independent Dealer/Insurance Affiliate and Investment Company Affiliate Governors for each vacant or new Governor position on the New SRO Board; Industry and Public Directors for each vacant or new position on the NASD Regulation Board and the NASD Dispute Resolution Board for election by the stockholder; and Industry and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board.</p>
<p>Composition and Qualifications of the Nominating Committee</p>	<p>The National Nominating Committee consists of no fewer than six and no more than nine members. The number of Non-Industry committee members equals or exceeds the number of Industry committee members. If the National Nominating Committee consists of six members, at least two must be Public</p>	<p>The Nominating Committee is jointly populated by the Chief Executive Officer and the Chief Executive Officer of NYSE Regulation, Inc. as of Closing (or his duly appointed or elected successor as Chair of the Board), subject to ratification of the</p>	<p>The Nominating Committee consists of such number of members of the Board as the Board determines from time to time. The number of Public Governors on the Nominating Committee equals or exceeds the number of Industry Governors on the</p>

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
	<p>committee members. If the National Nominating Committee consists of seven or more members, at least three must be Public committee members. No officer or employee of the NASD serves as a member of the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members are current members of the NASD Board.</p> <p>A National Nominating Committee member may not simultaneously serve on the National Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the National Nominating Committee.</p>	<p>appointees by the Board. The number of Public Governors on the Nominating Committee equals or exceeds the number of Industry Governors on the Nominating Committee. The Nominating Committee is at all times comprised of a number of members which is a minority of the entire Board and the Chief Executive Officer may not be a member of the Nominating Committee.</p>	<p>Nominating Committee. The Nominating Committee is at all times comprised of a number of members which is a minority of the entire Board and the Chief Executive Officer may not be a member of the Nominating Committee.</p>
Required Board Committees	<p>NASD is required to have an Audit Committee and a National Nominating Committee.</p>	<p>New SRO is required to have the following committees of the Board: the NASD Group Committee; the</p>	<p>New SRO is required to have the following committees of the Board: the Small Firm Governor Committee and the Large</p>

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
Composition of Board Committees	Unless otherwise provided in the By-Laws, any committee having the authority to exercise the powers and authority of the Board has a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the Board.	NYSE Group Committee; the Small Firm Governor Committee and the Large Firm Governor Committee, which have the authority described above in “Filling of Vacancies” and below in “Chair.” New SRO also is required to have Audit, Finance and Nominating Committees and, during the first year of the Transitional Period or as may be extended thereafter by the Board, an Integration Committee.	Firm Governor Committee, which have the authority described above in “Filling of Vacancies.” New SRO also is required to have Audit, Finance and Nominating Committees.
		The NASD Group Committee, the NYSE Group Committee, the Small Firm Governor Committee and the Large Firm Governor Committee are composed as described below in the description of such defined terms. Unless otherwise provided in the By-Laws, any other committee having the authority to exercise the powers and authority of the Board has a number of Public Governors as members thereof in excess of the number of	The Small Firm Governor Committee and the Large Firm Governor Committee are composed as described below in the description of such defined terms. Unless otherwise provided in the By-Laws, any other committee having the authority to exercise the powers and authority of the Board has a number of Public Governors as members thereof in excess of the number of Industry Governors which are members thereof.

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
		<p data-bbox="786 342 1105 1761">Industry Governors which are members thereof. In addition, any committee of the Board having the authority to exercise the powers and authority of the Board (with the exception of the Large Firm Governor Committee, the Small Firm Governor Committee, the NASD Group Committee and the NYSE Group Committee) also has (i) a percentage of members (to the nearest whole number of committee members) that are members of the NASD Group Committee at least as great as the percentage of Governors on the Board that are members of the NASD Group Committee; and (ii) a percentage of members (to the nearest whole number of committee members) that are members of the NYSE Group Committee at least as great as the percentage of Governors on the Board that are members of the NYSE Group Committee.</p>	

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
Executive Committee Composition	The Executive Committee consists of no fewer than five and no more than eight Governors. The Executive Committee includes the Chief Executive Officer of the NASD, and at least one Director of NASD Regulation. The Executive Committee has a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.	The Executive Committee consists of no fewer than five and no more than eight Governors. The Executive Committee includes the Chief Executive Officer of the New SRO and the Chair of the Board.	Same as Transitional Period.
Integration Committee	No such committee.	The Board shall appoint an Integration Committee with a term of one year unless continued for a longer period by resolution of the Board. The Chair of the Board shall be the Chair of the Integration Committee.	Not applicable.
Annual Meetings of Members	An annual meeting of members of the NASD is held on such date and at such place as the Board designates. The business of the annual meeting includes the election of the members of the Board, Industry, Non-Industry and Public, by all of the	Except for the first annual meeting following the Closing at which Large Firm Governors, the Mid-Size Firm Governor and Small Firm Governors are elected, there are no annual meetings of members during the	An annual meeting of members of the New SRO is held on such date and at such place as the Board designates. The business of the annual meeting includes the election of the Small, Mid-Size and Large Firm members of

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
	members of the NASD.	Transitional Period. At such first annual meeting, Small Firm members are only entitled to vote for the election of Small Firm Governors, Mid-Size Firm members are only entitled to vote for the election of the Mid-Size Firm Governor and Large Firm members are only entitled to vote for the election of Large Firm Governors.	the Board. Small Firm members are only entitled to vote for the election of Small Firm Governors, Mid-Size Firm members are only entitled to vote for the election of the Mid-Size Firm Governor and Large Firm members are only entitled to vote for the election of Large Firm Governors.
Authority to Call Special Meetings of the Board	Not specified.	Special meetings of the Board of the New SRO may be called by the Board, the Chief Executive Officer of the New SRO, the Chair or the Lead Governor.	Same as the Transitional Period.
Authority to Include Items on the Agenda for Meetings of the Board	Not specified.	Each of the Chief Executive Officer of the New SRO and the Chair, and with respect to matters from which the Chief Executive Officer of the New SRO and the Chair recuse themselves, the Lead Governor, has the authority to include matters on the agenda of a meeting of the Board.	Same as the Transitional Period.
Chair	Elected by the Board from among its members.	The Chair is the Chief Executive Officer of NYSE Regulation, Inc. as of Closing so long as	Elected by the Board from among its members.

<u>Topic</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and for the Transitional Period</u>	<u>By-Laws Effective at the Expiration of the Transitional Period</u>
		<p>he remains a Governor. In the event the Chief Executive Officer of NYSE Regulation, Inc. as of the Closing ceases to be a Chair during the Transitional Period, subject to the Restated Certificate of Incorporation and the By-Laws, the Chair is selected by the NYSE Group Committee from among its members; provided that the Chair so selected may not be a member of the Board of Directors of NYSE Group, Inc. nor may the successor Chief Executive Officer of NYSE Regulation, Inc. serve as Chair.</p>	

The proposed amendments to the NASD By-Laws also include changes or additions to certain defined terms. In addition to changes to accommodate the new governance structure, the proposed rule change would amend the definition of “disqualification” in the NASD By-Laws to conform to the federal securities laws, such that any person subject to a statutory disqualification under the Exchange Act also would be subject to disqualification under NASD rules.⁸

⁸ NASD will be filing a subsequent rule change to address the applicable eligibility proceedings for persons subject to disqualification as a result of the proposed change in definition.

These changes or additions to the defined terms in the NASD By-Laws include the following:

<u>Term</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and through and after the Transitional Period</u>
Closing	Not applicable.	Means the closing of the consolidation of certain member firm regulatory functions of NYSE Regulation, Inc. and NASD.
Disqualification	As currently written, the definition lists some, but not all, of the grounds for statutory disqualification contained in Section 3(a)(39) of the Exchange Act.	Means the definition that is contained in Section 3(a)(39) of the Exchange Act. The purpose of the amendment is to conform the By-Laws directly to the statutory provision that NASD is obligated to enforce, as well as to conform the By-Laws to any subsequent amendments to the statute.
Floor Member Governor	Not applicable.	Means a member of the Board appointed as such who is a person associated with a member (or a firm in the process of becoming a member) which is a specialist or floor broker on the New York Stock Exchange trading floor.
Independent Dealer/ Insurance Affiliate Governor	Not applicable.	Means a member of the Board appointed as such who is a person associated with a member which is an independent contractor financial planning member firm or an insurance company, or an affiliate of such a member.
Industry Governor or Industry committee member	Means a Governor (excluding the Chief Executive Officer of the NASD and the President of NASD Regulation) or committee member who: (1) is or has served in the prior three years as	Means the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor and any other Governor (excluding the Chief Executive Officer of the New SRO and,

Term

Current By-Laws

**By-Laws Effective at Closing and
through and
after the Transitional Period**

an officer, director or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer or employee of a broker, dealer or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's or employee's

during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc.) or committee member who: (1) is or has served in the prior year as an officer, director (other than as an independent director), employee or controlling person of a broker or dealer, or (2) has a consulting or employment relationship with or provides professional services to a self-regulatory organization registered under the Exchange Act, or has had any such relationship or provided any such services at any time within the prior year.

<u>Term</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and through and after the Transitional Period</u>
Investment Company Affiliate Governor	<p>professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation, or has had any such relationship or provided any such services at any time within the prior three years.</p>	<p>Means a member of the Board appointed as such who is a person associated with a member which is an investment company (as defined in The Investment Company Act of 1940, as amended) or an affiliate of such a member.</p>
Joint Public Governor	Not applicable.	<p>Means the one Public Governor to be appointed as such by the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing jointly.</p>
Large, Mid-Size and Small Firms	Not applicable.	<p>Mean any broker or dealer admitted to membership in the New SRO which, at the time of determination, has 1-150, 151-499 or 500 or more registered persons, respectively.</p>

<u>Term</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and through and after the Transitional Period</u>
Large Firm, Mid-Size Firm and Small Firm Governors	Not applicable.	Mean members of the Board to be elected by Large, Mid-Size, and Small Firm members, respectively, provided, however, that in order to be eligible to serve, a Large Firm, Mid-Size Firm, and Small Firm Governor must be an Industry Governor and must be registered with a member which is a Large Firm, Mid-Size Firm, or Small Firm member, as the case may be.
Large Firm Governor and Small Firm Governor Committees	Not applicable.	Means a committee of the Board comprised of all of the Large Firm Governors or Small Firm Governors, as the case may be.
Lead Governor	Not applicable.	Means a member of the Board elected as such by the Board, provided, however, that any member of the Board who is concurrently serving as a member of the Board of Directors of NYSE Group, Inc. is not eligible to serve as the Lead Governor.
NASD Public Governors and NYSE Public Governors	Not applicable.	Mean the five Public Governors to be appointed as such by the Board in office prior to the Closing and the five Public Governors to be appointed as such by the Board of Directors of NYSE Group, Inc., respectively, effective as of Closing.
NASD Group Committee	Not applicable.	Means a committee of the Board comprised of the five Public Governors and the Independent Dealer/Insurance Affiliate Governor appointed as such by the Board in office prior to Closing, and the Small Firm Governors which were nominated for election as such by the Board in office prior to Closing, and in

<u>Term</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and through and after the Transitional Period</u>
NYSE Group Committee	Not applicable.	each case their successors. Means a committee of the Board comprised of the five Public Governors and the Floor Member Governor appointed as such by the Board of Directors of NYSE Group, Inc., and the Large Firm Governors which were nominated for election as such by the Board of Directors of NYSE Group, Inc., and in each case their successors.
Non-Industry Governor or Non-Industry committee member	Means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation) or committee member who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an Industry Governor or committee member.	Not applicable.
Public Governor or Public committee member	Means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation.	Means any Governor or committee member who is not the Chief Executive Officer of the New SRO or, during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc., who is not an Industry Governor and who otherwise has no material business relationship with a broker or dealer or a self-regulatory organization registered under the Exchange Act, other than as a

<u>Term</u>	<u>Current By-Laws</u>	<u>By-Laws Effective at Closing and through and after the Transitional Period</u>
Transitional Period	Not applicable.	<p>public director of such a self-regulatory organization.</p> <p>Means the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing.</p>

There also are certain other non-substantive changes reflected in the rule text. For example, each reference to “the NASD” or “NASD” in the NASD By-Laws will be replaced with “the Corporation” in contemplation of the change in the name of the corporation. In addition, each reference to the “Rules of the Association” in the NASD By-Laws will be replaced with the “Rules of the Corporation.” The effective date of the proposed rule change will be the closing of the Transaction. Assuming SEC approval of the proposed rule change, corresponding changes will be made to NASD’s Certificate of Incorporation. The effective date of the corresponding changes to NASD’s Certificate of Incorporation also will be the closing of the Transaction.

Proposed Changes to NASD Regulation By-Laws

In 1996, based on recommendations of a committee appointed by the NASD Board, NASD formed its subsidiary NASD Regulation (in addition to the already existing Nasdaq) and adopted the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) to reflect its change in corporate structure.⁹ In 2000, NASD created another subsidiary for its mediation and arbitration functions, NASD Dispute Resolution. Following the

⁹ On December 20, 2006, NASD eliminated its delegation of authority to Nasdaq under the Delegation Plan and effectuated complete separation with Nasdaq, including dissolution of NASD’s controlling share in Nasdaq.

closing of the Transaction, the New SRO will evaluate the role and governance structure of the subsidiaries and the ongoing need for the Delegation Plan. At this time, the proposed rule change would make limited conforming changes to the NASD Regulation By-Laws solely to reflect the proposed governance structure of the New SRO Board.

First, in light of the new proposed composition of the New SRO Board, the proposed rule change would amend Section 5.2 of the NASD Regulation By-Laws (Number of Members and Qualifications of the National Adjudicatory Council (“NAC”)) to eliminate the reference that the Chairman of the NAC shall serve as a Governor of the NASD Board for a one-year term. Second, because the Chairman of the NAC may continue to serve as a Director of the NASD Regulation Board, the proposed rule change would eliminate the requirement in Section 4.3 (Qualifications) that only Governors of the NASD Board shall be eligible for election to the NASD Regulation Board. Finally, NASD proposes to amend the statement in Section 4.3 that provides that the CEO of NASD shall be an ex-officio non-voting member of the NASD Regulation Board, to reflect that Ms. Schapiro will occupy both the position of CEO of the New SRO and the President of NASD Regulation. In particular, the proposed rule change would clarify that where the CEO of the New SRO also serves as President of NASD Regulation, then the person shall have all powers, including voting powers, granted to all other Directors pursuant to applicable law, the Restated Certificate of Incorporation, the Delegation Plan and the NASD Regulation By-Laws.

The effective date of the proposed rule change will be the closing of the Transaction.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,¹⁰ in that it provides for the organization of the New SRO in a manner that will permit the New SRO to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by New SRO members and persons associated with members with the Act, the rules and regulations thereunder, New SRO rules and the federal securities laws. NASD further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act¹¹ in that the amendments are designed to assure a fair representation of the New SRO's members in the selection of its Governors and administration of its affairs, as well as to comply with the public participant requirements of the Act. Moreover, firms that today are regulated by both NASD and NYSE Regulation will benefit from the elimination of the current duplication of regulatory review of these firms. The Transaction, as reflected in the proposed rule change, will further benefit members as it will streamline the broker-dealer regulatory system, combine technologies and permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization – all of which will serve to enhance oversight of U.S. securities firms and help to ensure investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

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.

¹⁰ 15 U.S.C. 78o-3(b)(2).

¹¹ 15 U.S.C. 78o-3(b)(4).

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

Written comments were neither solicited nor received.

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 NASD 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2007-023 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2007-023 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).