

# **NASD**

National Association of Securities Dealers, Inc.  
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

## **notice to members 86-85**

December 5, 1986

**TO:** All NASD Members and Other Interested Persons

**RE:** Request for Comments on Proposed Amendments to Article II, Sections 3, 4 and 5 of the NASD By-Laws

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**LAST DATE FOR COMMENT: JANUARY 5, 1987.**

### **EXECUTIVE SUMMARY**

The NASD requests comments on proposed amendments to Article II, Sections 3, 4 and 5 of the NASD By-Laws. The amendments would require controlling persons of a firm liquidated under the Securities Investor Protection Act of 1970 (SIPA) to undergo eligibility proceedings pursuant to the NASD Code of Procedure prior to becoming associated, or continuing in association, with an NASD member firm.

The NASD believes that these amendments would provide an additional measure of protection for public customers and members from possible future misconduct by persons who have had control relationships with firms that have been liquidated under SIPA. The text of the proposed amendments is attached.

### **BACKGROUND**

Since the adoption of the Securities Investor Protection Act of 1970, the NASD has been involved in regulating the financial and operational condition of the majority of NASD members. Currently, with an overall membership of approximately 6,700 firms, the NASD is the designated examining authority for financial responsibility pursuant to SEC Rule 17d-1 for approximately 6,300 firms. In that capacity, the NASD has established comprehensive early-warning surveillance programs to closely monitor the financial and operational condition of its designated members, including computerized analysis of FOCUS I and II reports.

In its role as designated examining authority, it has been the NASD's experience that the liquidation of a broker-dealer typically involves violations of net capital and recordkeeping rules. While these violations result in disciplinary proceedings against the firm and its controlling persons and the imposition of appropriate sanctions, which may include suspensions or bars, such sanctions may not be imposed or become effective until well after the controlling persons of the liquidated firm have become associated with other NASD member firms. On several occasions, the Board of Governors and the staff of the Securities Investor Protection Corporation (SIPC) have expressed concern at the ease with which individuals who have had responsibility for the liquidation of a member firm by SIPC become affiliated in a similar responsible role with another member firm.

Under these circumstances, the Board believes that a close review of the past and proposed activities of the controlling persons of a liquidated broker-dealer, prior to the approval of such person's associations with other member firms, would provide an additional measure of protection for public customers and member firms from possible future misconduct by such persons.

### **PROPOSED AMENDMENTS**

The NASD Board of Governors is publishing for comment proposed amendments to Article II, Sections 3, 4 and 5 of the NASD By-Laws that would authorize the NASD to examine the involvement of specified control persons in, and their responsibility for, the activities that led to the liquidation of a broker-dealer, prior to approving the association, or continued association of such persons, with another member firm.

Under the proposed amendments, a person who was an officer, director, general partner, financial and operations principal, owner of 10 percent or more of the voting securities, or a controlling person (or a person performing similar functions) of a broker-dealer at the time SIPA proceedings were instituted, or whose association with the broker-dealer was terminated within six months prior to the institution of SIPA proceedings, would be ineligible to become associated with an NASD member firm. In the event that a person's association with the liquidated broker-dealer was terminated prior to the institution of liquidation proceedings and he had become associated with another broker-dealer in the interim, he would be ineligible to continue in association with that broker-dealer.

The proposed amendments would require an ineligible person to undergo eligibility proceedings pursuant to Article VII of the NASD Code of Procedure. Article VII provides for application by an ineligible person for association with a member firm, consideration of the application by a panel designated by the Board of Governors, which may involve a hearing, and the issuance of a written decision by the Board of Governors.

The purpose of the eligibility proceedings is to determine the ineligible person's fitness to become associated or continue in association with a member firm and in what capacity. For example, a person who exercised supervisory or financial and operational responsibilities at a broker-dealer that was liquidated may be found to be qualified for a retail sales position, but not well suited for additional supervisory or financial and operational responsibilities.

TO: SOES Subscribers  
FROM: SOES Operations  
DATE: December 1, 1986  
SUBJECT: SOES Message Enhancement

The NASD Market Services, Inc. Board of Directors and the SOES Users Committee are pleased to announce a modification to the Small Order Execution System (SOES) to take effect December 12, 1986.

SOES Cancellation Message:

A new on-line screen/print message has been introduced to SOES which identifies a cancelled execution report. Upon the acceptance of a SOES Supervisory Cancellation, a screen/print message will be generated to the B partition of the originating order entry and market making terminals.

**The cancellation message for Order Entry firms will appear as follows:**

SCXO: OEID 11/14 XYZ 1234 B 1000 ABCD 9 3/8 MMID 10:50

The code SCXO identifies a SOES cancellation report for a purchase of 1000 ABCD @ 9 3/8 for the order entry firm OEID. The message will appear on the B partition of the terminal from which the order was entered. XYZ 1234 is the identifier and sequence number of the order. MMID is the market maker with whom the order was executed. The trade was cancelled on 11/14 at 10:50 a.m.

**The cancellation message for Market Makers will appear as shown below:**

SCXM: MMID 11/14 S 1000 ABCD 9 3/8 OEID 10:50 XYZ 1234

The code SCXM identifies a SOES cancellation report for a sale of 1000 ABCD @ 9 3/8 for the market maker MMID. The message will appear on the B partition of the terminal to which the order was routed. OEID is the order entry firm with whom the order was executed. XYZ 1234 is the identifier and sequence number of the execution. The trade was cancelled at 10:50 a.m. on 11/14.

NOTE: All cancellation reports will continue to appear in the execution file scan (SX). In addition, under the new modification cancellations will now automatically adjust total trade and share data on the trade statistic file (SQ).

Computer to Computer Interface:

The CTCI Cancellation message will utilize the same message format used for a SOES execution. The message will repeat the original trade with an indicator on line 3 denoting that the message is a cancellation. Questions regarding CTCI interface should be directed to Jack Donlon, New York Automation, (212) 839-6375.

If you have any questions regarding the above modification, please contact SOES Operations at (212) 839-6210.

<b>Symbol*</b>	<b>Company</b>	<b>Location</b>
BFSB	BFS Bancorp, Inc.	Bristol, CT
BOSA	Boston Acoustics, Inc.	Peabody, MA
LTTL	Carole Little, Inc.	Los Angeles, CA
CRES	Crestmont Federal Savings & Loan Association	Springfield, NJ
ITAN	InterTAN, Inc.	Fort Worth, TX
PHBK	Peoples Heritage Savings Bank	Portland, ME
PLRS	Polaris Industries, Inc.	Minneapolis, MN
PLTZC	Pulitzer Publishing Company	St. Louis, MO
RFED	Roosevelt Federal Savings & Loan Association	Chesterfield, MO
SGLO	Sigallo Ltd.	New York, NY
TLMN	Talman Home Federal Savings and Loan Associaton of Illinois	Chicago, IL
TRUS	Trust America Service Corp.	St. Petersburg, FL
UNMAA	Uni-Marts, Inc. (C1 A)	State College, PA

**NASDAQ/NMS Interim Additions**

<b>Symbol*</b>	<b>Security</b>	<b>Date of Entry</b>
AGII	Argonaut Group, Inc.	11/13/86
IRWN	Irwin Magnetic Systems, Inc.	11/13/86
HIII	Harman International Industries, Inc.	11/14/86
NSSB	Norwich Savings Society (The)	11/14/86
CLIC	Clairson International Corporation	11/18/86
HDRP	HDR Power Systems, Inc.	11/19/86
FARR	Farragut Mortgage Company, Inc.	11/20/86
HMSB	Home Savings Bank (The)	11/20/86
SPAIB	Strategic Planning Associates, Inc. (C1 B)	11/20/86
MRCH	Merchants Group, Inc.	11/21/86

The following changes to the list of NASDAQ/NMS securities occurred since November 7, 1986:

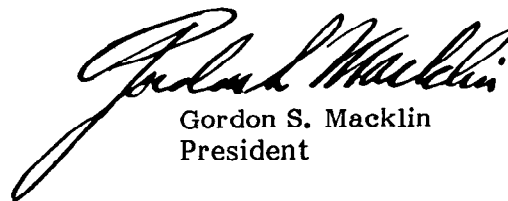
<b>NASDAQ/NMS Symbol* And/Or Name Changes</b>		<b>Date of Change</b>
<b>New/Old Symbol*</b>	<b>New/Old Security</b>	
IMATW/IMATW	Imatron, Inc. (11/12/90 Wts)/ Imatron, Inc. (08/02/88 Wts)	11/10/86

**NASDAQ/NMS Deletions**

<b>Symbol*</b>	<b>Security</b>	<b>Date</b>
PWST	Pacwest Bancorp	11/10/86
PHCI	Peak Health Care, Inc.	11/10/86
DPWR	Datapower, Inc.	11/11/86
EPICC	Environmental Processing, Inc.	11/11/86
EPIWC	Environmental Processing, Inc. (Wts)	11/11/86
OLOG	Offshore Logistics, Inc.	11/11/86
UOBI	United Oklahoma Bancshares, Inc.	11/11/86
STWBW	Statewide Bancorp (Wts)	11/12/86
WBBC	Webb Company (The)	11/13/86
ALST	American List Corporation	11/14/86
RHDS	Rhodes, Inc.	11/14/86
CJOCZ	California Jockey Club (Paired Certificates)	11/17/86
CFCC	Carteret Savings Bank	11/18/86
ITELP	IteI Corporation (Pfd)	11/18/86
MUTS	Mutual Savings Life Insurance Company	11/18/86

Any questions regarding this notice should be directed to Ms. Kit Milholland, Senior Analyst, NASDAQ Operations, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Mr. Leon Bastien, Assistant Director, Market Surveillance, at (202) 728-8192.

Sincerely,



Gordon S. Macklin  
President

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[new language is underlined; deleted language is stricken through]

## BY-LAWS

### ARTICLE I

#### Definitions

~~Sec. 3-~~ When used in these By-Laws, and any rules of the Corporation, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934 as amended;

~~(e)~~ (b) The term "bank" means ~~(A)~~ (1) a banking institution organized under the laws of the United States, ~~(B)~~ (2) a member bank of the Federal Reserve System, ~~(C)~~ (3) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under Section 11(k) of the Federal Reserve Act, as amended, and which is supervised and examined by a State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of ~~this title~~ the Act, and ~~(D)~~ (4) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses ~~(A)~~ (1), ~~(B)~~ (2) or ~~(C)~~ (3) of this paragraph subsection;

(c) "branch office," including a corporate subsidiary of a member, means an office located in the United States which is owned or controlled by a member, and which is engaged in the investment banking or securities business.

~~(a)~~ (d) The term "broker" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(e) "Commission" means the Securities and Exchange Commission;

(f) "Corporation" means the National Association of Securities Dealers, Inc.;

**"Dealer"**

(b) (g) The term "dealer" means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization or other legal entity engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business;

**"Investment banking or securities business"**

(c) (h) The term "investment banking or securities business" means the business, carried on by a broker, or dealer, or municipal securities dealer (other than a bank or department or division of a bank) of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer therein, or of purchasing and selling securities upon the order and for the account of others; provided, however, that the term "investment banking or securities business" shall not include transactions on regularly organized exchanges, but such term shall include all business relating to such transactions to the extent that such business is not conducted by a member of such exchange, or by any person or organization having the privilege of any such exchange for itself or any of its partners or executive officers.

(d) (i) The term "member" means either any broker or dealer admitted to membership in the Corporation; or any officer or partner of such a member or, as provided in Section 5 of this Article, the executive representative of such a member or the substitute for such a representative;

(j) "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political

subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond as defined by Section 3(a)(29) of the Act;

(k) "municipal securities dealer" means any person, except a bank or department or division of a bank, engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include any person insofar as he buys or sells securities for his own account either individually or in some fiduciary capacity but not as a part of a regular business;

**"Person associated with a member"**

(f) (l) The term "person associated with a member" or "associated person of a member" means every sole proprietor, partner, officer, director, or branch manager of any member, or any natural person occupying a similar status or performing similar functions, or any natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by such member, whether or not any such person is registered or exempt from registration with the Corporation pursuant to these By-Laws;

**"Registered Broker, Dealer or Municipal Securities Dealer"**

(m) "registered broker, dealer or municipal securities dealer means any broker, dealer or municipal securities dealer which is registered with the Commission under the Act;

(n) "rules of the Corporation" means all rules of the Corporation including the Rules of Fair Practice, Code of Procedure, Uniform Practice Code, and any interpretations thereunder.

#### Explanation

The added language at the beginning of the Article and the new definition of "rules of the Corporation" in subsection (n) are intended to make clear that the definitions in the By-Laws also apply to terms used in the Rules of Fair Practice and other Association rules.

The new terms "municipal securities" and "municipal securities dealer" in subsections (j) and (k) parallel the statutory definitions added by the Securities Acts Amendments of 1975 bringing this class of security and type of dealer under regulation by the Commission and the Association. The definition of "registered broker, dealer or municipal securities dealer" is included because under the 1975 Act Amendments only broker/dealers registered with the SEC are eligible for membership. The new definitions in subsections (a), (e) and (f) and amendments to certain existing definitions are for clarity. The definition of "branch office" has been transferred from existing Article I, Section 11 of the By-Laws.

[All of new Article II is taken from the existing provisions of Sections 1 and 2 of Article I, and has been substantially rewritten for clarity and to conform to the Securities Acts Amendments of 1975.]

## **ARTICLE II**

### **Membership Qualifications of Members and Associated Persons**

#### **Qualifications for Membership Persons Eligible to become Members and Associated Persons of Members**

Sec. 1. (a) Any registered broker, or dealer or municipal securities dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States, under the laws of any State and/or the laws of the United States, shall be eligible to for membership in the Corporation, except such registered brokers, or dealers or municipal securities dealers as which are excluded pursuant to Section 2 of this Article under the provisions of Sections 3(a) or (b) of this Article.

(b) Any person shall also be eligible to become an associated person of a member, except such persons who are excluded under the provisions of Section 3(b) of this Article.

#### **Explanation**

Subsection (a) is similar to existing Article I, Section 1 of the By-Laws, but incorporates the limitation of Sections 15A(g)(1) of the 1934 Act that only registered broker/dealers are eligible for membership in the Association. The new reference to municipal securities dealers, when read with the definition of the term in proposed Article I, subsection (j) of the By-Laws, makes clear that only non-bank municipal securities dealers are eligible for membership in conformity with the regulatory scheme for municipal securities established under the Securities Acts Amendments of 1975.

Subsection (b) is entirely new and conforms to the requirement of Section 15A(b)(3) of the 1934 Act that the rules of the Association must provide that, with certain exceptions, any person may become associated with a member.

**Restrictions on Admission to or Continuance in Membership**

~~Sec. 2:~~ (a) No broker or dealer, except with the approval or at the direction of the Securities and Exchange Commission (hereinafter referred to in these By-Laws as the Commission), in cases in which the Commission finds it appropriate in the public interest so to approve or direct pursuant to Section 15A of the Securities Exchange Act of 1934, as amended (hereinafter referred to as the Act), shall be admitted to or continued in membership in the Corporation if such broker or dealer, whether prior or subsequent to becoming such, (A) has been and is suspended or expelled from a registered national or affiliated securities association, registered pursuant to Section 15A of the Act, or from a national securities exchange, registered pursuant to Section 6 of the Act, or has been and is barred or suspended from being associated with all members of such association or national securities exchange for violation of any rule of such registered securities association or national securities exchange which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade; or (B) is subject to an order of the Commission denying, suspending or revoking his registration pursuant to Section 15 of the Act, or expelling or suspending him from membership in a registered securities association or a national securities exchange, or barring or suspending him from being associated with a broker or dealer; or (C) by his conduct while associated with a broker or dealer, was a cause of any suspension, expulsion, or order of the character described in clauses (A) or (B), which is in effect with respect to such broker or dealer; or (D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person who, if such person were a broker or dealer, would be ineligible for admission to our continuance in membership under clauses (A), (B), or (C) of this section.

(b) No broker or dealer shall be admitted to or continued in membership in the Corporation if the Board of Governors deems it appropriate, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, if such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a national securities exchange or has been and is barred or suspended from being associated with all members of such exchange, for violation of any rule of such exchange.

(c) In those cases where the Board of Governors deems it appropriate, no broker or dealer shall be admitted to or continued in membership in the Corporation if such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated, (A) has willfully made or caused to be made in any application or report filed with the Corporation, or in any proceeding before the Corporation with respect to membership or registration, any statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or (B) has been convicted within the ten years preceding the filing of an application or at any time thereafter of any felony or misdemeanor which the Corporation finds involves the purchase or sale of any security or arises out of the conduct of the business of a broker, dealer or investment adviser; or which involves embezzlement, fraudulent conversion, or misappropriation of funds or securities; or which involves mail fraud, or fraud by wire, radio, or television; or, (C) is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank or insurance company, or from engaging in or

continuing any conduct or practice in connection with such activity, or in connection with the purchase or sale of any security.

Authority of Board to Adopt Qualification Requirements

(d) Sec. 2 No broker or dealer shall be admitted to or continued in membership and no natural person shall become or continue to be associated with a member, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, unless such broker or dealer or person associated with a member is qualified to become a member or a person associated with a member in conformity with specified and appropriate standards with respect to the training, experience, and such other qualifications as the Board of Governors finds necessary or desirable, and in the case of a member, the financial responsibility of such member. The Board of Governors shall have authority to adopt rules and regulations applicable to applicants for membership, members and persons associated with applicants or members establishing specified and appropriate standards with respect to the training, experience, competence and such other qualifications as the Board of Governors finds necessary or desirable, and in the case of an applicant for membership or a member, standards of financial responsibility and operational capability.

In establishing and applying such standards, the Board of Governors may classify members and persons associated with such members, taking into account relevant matters, including the nature, extent and type of business done being conducted and of securities sold, dealt in, or otherwise handled. The Board of Governors may specify that all or any portion of such standards shall be applicable to any such class and may require the persons in any such class to be registered with the Corporation.

Such classifications, qualifications, registration requirements, standards and exceptions thereto shall be incorporated in Schedule C attached to and made a part of these By-Laws. Within the limitations provided herein, the Board of Governors shall have the power to adopt, alter, amend, supplement or modify the provisions of Schedule

"C" from time to time without recourse to the membership for approval; as would otherwise be required by Article IX hereof, and Schedule "C", as adopted, altered, amended, supplemented or modified, shall become effective as the Board of Governors may prescribe unless disapproved by the Commission. The Board of Governors may from time to time make changes in such rules, regulations and standards as it deems necessary or appropriate. Neither the adoption nor any change in such standards need be submitted to the membership for approval and such rules, regulations and standards as adopted or amended shall become effective at such time as the Board of Governors may prescribe.

Explanation

The provision is based upon existing Article I, Section 2(d) of the By-Laws, but has been rewritten primarily for clarity and to be consistent with other provisions of the By-Laws. Article I, Sections 2(a), (b) and (c) have been completely replaced by new sections 3 and 4 below. It is proposed that the content of existing Schedule C will be moved to a different portion of the Manual.

Ineligibility of Certain Persons  
for Membership or Association

Sec. 3. (a) No registered broker, dealer or municipal securities dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities dealer or member fails or ceases to satisfy the qualification requirements under Section 2 of this Article, or if such broker, dealer, municipal securities dealer or member is or becomes subject to a disqualification under Section 4 of this Article.

(b) No person shall become associated with a member, or continue to be associated with a member, or transfer association to another member, if such person fails or ceases to satisfy the qualification requirements of Section 2 of this Article, or if such person is or becomes subject to a disqualification under Section 4 of this Article; and no broker, dealer or municipal securities dealer shall be admitted to membership, and no member shall be continued in membership, if any person associated with it is ineligible to be an associated person under this subsection.



(c) If it deems it appropriate, the Board of Governors, upon notice, may cancel the membership of a member if it becomes ineligible for continuance in membership under subsection (a) hereof, may suspend or bar a person from continuing to be associated with any member if such person is or becomes ineligible for association under subsection (b) hereof, and may cancel the membership of any member who continues to associate with any such ineligible person.

(d) Any broker, dealer or municipal securities dealer which is ineligible for admission into membership, or any member which is ineligible for continuance in membership, may file with the Board of Governors an application requesting relief from the ineligibility pursuant to procedures adopted by the Board of Governors and contained in the Corporation's Code of Procedure. The Board of Governors may, in its discretion, approve the admission or continuance of an applicant or member, or the association of any person, if the Board determines that such approval is consistent with the public interest and the protection of investors. Any approval hereunder may be granted unconditionally or on such terms and conditions as the Board considers necessary or appropriate. In the exercise of the authority granted hereunder, the Board of Governors may:

(i) conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification may include the proposed or present business of an applicant for membership or a member, conditions of association of any prospective or presently associated person, among other matters;

(ii) permit, in limited types of situations, a membership or association with a member pending completion of its inquiry or investigation, and its final determination, based upon a consideration of relevant factors, and may classify situations taking into account the status of brokers, dealers and municipal securities dealers as applicants or existing members and of persons as prospective or presently associated

persons of members; the type of disqualification or failure to qualify; whether a member or associated person has been the subject of a previous approval and the terms and conditions thereof; and any other relevant factors; and

(iii) delegate any of its functions and authority under this subsection (d) to appropriate committees of the Corporation or to Corporation staff members.

(e) An application filed under subsection (d) hereof shall not foreclose any action which the Board of Governors is authorized to take under subsection (c) hereof until approval has been granted.

(f) Approval by the Board of Governors of an application made under subsection (d) may not, under certain circumstances, take effect until the Commission has indicated its acquiescence under the Act.

#### Explanation

The provision is a complete revision and consolidation of existing By-law provisions concerning ineligibility for membership or association with a member. The changes are primarily clarifying.

Subsection (a) carries forward the existing prohibitions of Article I, Section 2 of the By-laws and provides that no applicant or member shall be admitted or continued in membership if there is a failure to satisfy examination and other qualification requirements, or the applicant or member is subject to a disqualification as that term is defined by Section 4. Subsection (b) imposes similar standards of ineligibility upon prospective and presently associated persons, and also carries forward existing language under which a member becomes ineligible for continuance in membership if it allows an ineligible person to become or remain associated with the member.

Subsection (c) grants authority to the Board of Governors to summarily cancel the membership of a member or suspend or bar a person from continuing to be associated with a member in cases where a member or person becomes ineligible under subsections (a) and (b). The provision carries forward substantially the existing language of Article I, Section 13(b) of the By-laws and is designed to make the ineligibility provisions of subsections (a) and (b) effective in the event of a failure to voluntarily comply with the prohibitions thereunder.

Subsection (d) is based upon existing Article I, Section 13(c) of the By-Laws, but considerably expands upon and codifies the scope of the Board's authority as it has been carried out in practice. The provision's introductory language states, in substance, that notwithstanding an ineligibility, any applicant for membership or member has a right to make application to the Board requesting approval of its admission or continuance in membership. It carries forward existing practice by requiring an application to be made by a member where an ineligibility concerns an associated person in recognition of the importance of supervision to a determination to approve or deny

association. It also makes explicit the Board's authority to impose conditions on any approval where such appears necessary or appropriate.

The remaining language of the provision is entirely new to the By-laws, but reflects existing practice. Subsection (d)(i) authorizes the Board to conduct an investigation in such depth as it deems necessary to any determination to approve. Subsection (d)(ii) gives the Board authority to deal with the variety of ineligibility situations which experience has demonstrated are likely to occur and to adopt policies or guidelines therefor concerning such matters as employment, admission and continuance in membership during the time period involved in reaching a final determination. Subsection (d)(iii) recognizes the substantial number of ineligibility situations which must be handled in the course of a year and authorizes the Board to delegate some of its responsibility to appropriate committees or the Association's staff.

Subsection (e) is intended to clarify that a pending application for approval does not, by itself, foreclose the Board from exercising its authority to summarily cancel a membership or bar an association if it deems such action necessary or appropriate. Subsection (f) incorporates the provisions of Section 15A(g)(2) of the Act, and Commission rules and regulations thereunder, that under certain circumstances the Association is required to notify the Commission of any approval with respect to persons who are ineligible by virtue of a disqualification.

#### Definition of Disqualification

Sec. 4. A person is subject to a "disqualification" with respect to membership, or association with a member, if such person:

#### Commission and Self-Regulatory Organizaton Disciplinary Sanctions

(a) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization,

(b) is subject to an order of the Commission denying, suspending or revoking its registration as a broker, dealer, or municipal securities dealer or barring his being associated with a broker, dealer, or municipal securities dealer;

(c) by his conduct while associated with a broker, dealer, or municipal securities dealer has been found to be a cause of any effective suspension, expulsion or order of the character described in subsections (a) or (b) of this Section; or

(d) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described in subsections (a), (b), or (c) of this Section.

Misstatements

(e) has willfully made or caused to be made in any application for membership in the Corporation, or to become associated with a member of the Corporation, or in any report required to be filed with the Corporation, or in any proceeding before the Corporation, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

Convictions

(f) has been convicted within ten years preceding the filing of any application for membership in the Corporation, or to become associated with a member of the Corporation, or at any time thereafter, of any felony or misdemeanor which;

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company or fiduciary;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

(iv) involves the violation of Sections 152, 1341, 1342, or 1343 or Chapters 25 or 47 of Title 18, United States Code; or

Injunctions

(g) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in

or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

Explanation

The provision parallels the definition of statutory disqualification in Section 3(a)(39) of the 1934 Act, added by the Securities Acts Amendments of 1975. It is somewhat broader than the types of disqualifications in existing Article I, Sections 2(a)-(c) of the By-Laws because of the broader language of the statute.

**ARTICLE I III**

**Membership**

Application for Membership

Sec. 4 1. (a) Application for membership in the Corporation, properly signed by the applicant, shall be made to the Board of Governors Corporation, on the form to be prescribed by the Board and shall contain:

**Membership agreement**

(1) Aan acceptance of and an agreement to comply with ~~all~~ the provisions of By-Laws, the rules of the Corporation as they are or may from time to time be adopted or amended, and all rulings, orders, directions and decisions of, and ~~penalties~~ sanctions imposed by, the Board of Governors or any duly authorized committee; the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board; provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;

(2) Aan agreement to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Board of Governors pursuant to these By-Laws;

(3) Aan agreement that neither the Corporation, nor any officer or employee thereof, nor any member of the Board of Governors or of any District or other Ecommittee, shall be liable, except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer

or member of the Board of Governors or of any ~~D~~istrict or other ~~C~~ommittee, in his official capacity, or by any employee of the corporation while acting within the scope of his employment or under instruction of any officer, board, or committee of the Corporation, in connection with the administration or enforcement of any of the provisions of the By-Laws, and any of the rules and regulations of the Corporation as they are or may from time to time be adopted; ~~changed~~ or amended, or any ruling, order, directive, decision of, or penalty imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board; and

(4) ~~S~~uch other reasonable information with respect to the applicant as the Board of Governors may require.

#### Action on Application for Membership

(b) Any application received by the Board of Governors ~~Corporation~~ shall be referred to the District Committee of the district in which the applicant has his principal place of business, and if a majority of the members of such District Committee ~~are satisfied~~ determine that the applicant ~~is qualified for membership pursuant to the provisions~~ has satisfied all of the admission requirements of this Article II of the By-Laws, it shall recommend the applicant's admission to membership and promptly notify the Secretary of the Corporation of such recommendation.

(c) If a majority of the members of such District Committee ~~are not satisfied~~ determine that the applicant ~~is qualified for membership under any provision~~ fails to satisfy all of the admission requirements of this Article II of the By-Laws, it shall promptly notify the Secretary of the Corporation who shall thereafter take appropriate action pursuant to Article I, Section 13 of these By-Laws.

#### Signing of the By-Laws

(d) Every applicant whose admission to membership is accepted by the Board of Governors ~~shall sign the By-Laws of the Corporation~~, provided that the signature of

any such applicant may be affixed to an instrument incorporating the By-Laws by reference and shall become a member of the Corporation as at of the date when posted to the membership roll.

(d) Each member is required to insure that its membership application with the Corporation is kept current at all times by supplementary amendments to its original application.

#### Explanation of Proposed Changes

Subsection (a) has been amended to conform to Sections 15A(b)(7) and 19(g) of the 1934 Act, added by the Securities Acts Amendments of 1975 which provide that the Association shall enforce compliance by its members with, in addition to its own rules, the 1934 Act, Commission rules and regulations thereunder and rules of the Municipal Securities Rulemaking Board. The amendments to subsections (b) and (c) are intended to more clearly express the existing procedure followed by the District Committees in reviewing membership applications. New subsection paragraph (d) simply makes explicit that members have an obligation to keep their membership applications current. This obligation is implicit under existing requirements.

#### Similarity of Membership Names

Sec. 2. (a) No person or firm shall be admitted to or continued in membership in the Corporation having a name which is identical to the name of another member appearing on the membership roll of the Corporation or a name so similar to any such name as to tend to confuse or mislead;

(b) No member may change its name without the prior approval of the Corporation.

#### Explanation

The effect is to convert an existing resolution of the Board of Governors into a By-Law provision.

#### Executive Representative

Sec. 5 3. (a) Each member shall appoint and certify to the Secretary of the Corporation one "executive representative" who shall represent, vote and act for the member in all the affairs of the Corporation, except that other executives of a member may also hold office in the Corporation, serve on the Board of Governors or committees of the Corporation, or otherwise take part in the affairs of the Corporation. A member

may change its executive representative ~~at will~~ upon giving written notice thereof to the Secretary, or may, when necessary, appoint, by written notice to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall preferably be an executive officer of the member, if a corporation, a partner in case of a partnership, and the member himself if an individual, but he may be an employee of the member, if given authority to act for the member in the course of the Corporation's activities.

(b) Each member shall appoint and certify to the Secretary of the Corporation one "district executive representative" for each district other than the one in which the main office is located in which the member maintains a registered branch office who shall represent, vote and act for the member in all the affairs of the Corporation in such district, except that other executives of a member may also serve on a district committee or district business conduct committee, or otherwise take part in the affairs of the Corporation. A member may change its district executive representative by giving written notice thereof to the Secretary, or may, when necessary, appoint by written notice to the Secretary, a substitute for its district executive representative.

#### Explanation

New subsection (b) concerning appointment by members of a "district executive representative" is a reworded and slightly more detailed statement of a part of the Explanation of the Board of Governors which appears under Article I, Section II of the present By-Laws.

#### Membership Roll

Sec. 6 4. The Secretary of the Corporation shall keep a currently accurate and complete membership roll, containing the name and address of each member, ~~and the name and address of the executive representative of each member~~ and the district executive representatives, if any, of each member. In any case where a membership has been terminated, such fact shall be recorded, together with the date on which the membership ceased. The membership roll of the Corporation shall at all times be available to all members of the Corporation, to all governmental authorities, and to the general public.



Explanation

The section is amended to conform to new subsection 2(b) above.

**Resignation of Members—Effective Date**

**Sec. 7 5.**

(a) Membership in the Association may be voluntarily terminated only by formal resignation. Resignations of members must be in writing and addressed to the Board of Governors, Corporation which shall immediately notify the appropriate District Committee. Any member may resign from the Corporation at any time. Such resignation shall not take effect until thirty (30) days after receipt thereof by the Board of Governors Corporation and until all indebtedness due the Corporation from such member shall have been paid in full and so long as any complaint or action is pending against the member and so long as any examination of such member is in process. The Board of Governernors, Corporation, however, may in its discretion declare a resignation effective at any time.

(b) **Retention of Jurisdiction** - A resigned member shall continue to be subject to the filing of a complaint by the Corporation based upon conduct which commenced prior to the effective date of the member's resignation from the Corporation. Any such complaint, however, shall be filed within one year after the effective date of the resignation.

**Transfer and Termination of Membership**

**Sec. 8 6. (a)** No individual, corporation or partnership which is a member of the Corporation may sell or transfer his or its membership or any right arising therefrom as a result of any consolidation, merger, reorganization, change of partners, name change, or otherwise, except that the consolidation, merger, change of name, or reorganization of any corporation which is a member of the corporation or any change in the name or membership of a partnership which is a member of the Corporation, shall not be deemed to constitute a transfer, except as otherwise herein provided. All rights of a member in

the Corporation or in its property shall cease upon the termination of his membership. In the case of an individual member, his membership shall forthwith cease upon his death. In the case of the liquidation or winding up of a corporation or partnership which is a member of the Corporation, its membership shall forthwith cease provided that all obligations of membership under the By-Laws and Rules of Fair Practice have been fulfilled, and unless except where the business of any such individual or corporation or partnership is to be carried on by a successor organization or organizations, and the predecessor corporation organization shall so represent to the Board of Governors, Corporation in which case the membership of any such individual or corporation or partnership shall be extended to such successor organization or organizations with the consent of the Board of Governors Corporation and subject to such terms and conditions as the Board deems equitable and appropriate in the circumstances.

(b) All rights of a member in the Corporation shall cease upon termination of membership. The membership of an individual shall terminate upon his death and the membership of a corporation or partnership shall terminate upon its liquidation or winding up provided that all obligations of membership under the By-Laws and rules of the corporation have been fulfilled, unless the business of the member is to be carried on by a successor organization, and the predecessor organization shall so represent to the Corporation, in which case the membership shall be extended to such successor organization with the consent of the Corporation and subject to such terms and conditions as the Corporation deems equitable and appropriate in the circumstances. The membership of an individual may be extended to a successor organization with the consent of the Board of Governors and subject to such conditions as the Board deems suitable and appropriate in the circumstances. The membership of any partnership shall not terminate by reason of the death or withdrawal of any partner, the addition of any new partner, or any change of name; provided, however, that the new partnership formed thereby shall continue in the investment banking or securities business and shall possess the qualifications required

for membership in the Corporation. The consolidation or reorganization or merger or change of name of any corporate member shall not terminate the membership of such corporate member; provided, however, that the new corporation formed thereby shall continue in the investment banking or securities business and shall possess the qualifications required for membership in the Corporation. The Board of Governors, however, shall have the right to require any successor firm or firms, whether corporations or partnerships, to sign or execute the By-Laws, or otherwise confirm their membership in the Corporation.

#### Explanation

This section is largely rewritten in order to clarify the intent. Subsection (a) prohibits a member from transferring its membership unless this occurs in connection with a merger, consolidation, reorganization or similar event and the business of the member is to be carried on by a successor organization. Subsection (b) provides that all rights of a member in the Corporation shall cease upon termination of membership unless the business of the member is carried on by a successor organization in which case the successor shall succeed to the rights and obligations of the member.

#### Registration of Branch Offices

Sec. 9 7. (a) Each branch office of a member of the Corporation shall ~~register~~ be registered with, and ~~be~~ listed upon the membership roll of, the Corporation, and shall pay such dues, assessments and other charges as shall be fixed from time to time by the Board of Governors pursuant to Article III ~~hereof~~ of the By-Laws.

(b) Each member of the Corporation shall promptly advise the Board of Governors of the opening or closing of any branch office of such member.

#### Explanation

Subsection (b) is new and incorporates the Board of Governors Resolution under Article I, Section 9 of the existing By-Laws. The other changes are for clarity.

#### Vote of Branch Offices

Sec. 10 8. A registered branch office of a member of the Corporation shall entitle such member Each member of the Corporation having a registered branch office shall be entitled to one vote on all matters pertaining solely to the district in which such registered branch office is located (including the election of members to the Board of

Governors from such district); provided, however, that if any member of the Corporation shall have more than one registered branch office in a district, or its principal office and one or more registered branch offices in a district, such member shall be entitled to only one vote in such district.

Explanation

The changes are for clarity.

**Definition of "Branch Office"**

~~Sec. 11.~~ The term "branch office" as used in Section 9 of this Article, including a corporate subsidiary of a member, is defined to be an office which is located in the United States which is owned or controlled by the member, and which is engaged in the investment banking or securities business as defined.

Explanation

The definition has been transferred to new Article I, subsection (c) of the By-Laws.

**District Committees' Right to Classify Branches**

Sec. ~~12~~ 9. A District Committee may classify any branch or corporate subsidiary of a member not meeting the requirements of Section ~~11~~ 9 of this Article as a "branch office" if such Committee is satisfied that the requirements of Section ~~11~~ 9 of this Article are substantially met and that the business of said branch or subsidiary in the district is of sufficient importance to justify such a classification.

**Membership Continuance Proceeding**

~~Sec. 13.~~ (a) A member shall retain its membership in the Corporation only so long as the Board of Governors deems that it possesses all of the qualifications for membership, and a broker or dealer seeking membership may, if the Board of Governors deems it appropriate, be denied admission therein if it is subject to any of the disqualifications provided in this Article.

(b) If the Corporation has reason to believe there is a disqualification, the member or broker or dealer shall be promptly notified in writing of the specific grounds of such disqualification from or denial of membership. If it deems it appropriate, the Board of Governors may summarily cancel the membership of a member if it becomes subject to any of the disqualifications provided in this Article or if it continues to associate with a person who is subject to any of the same disqualifications.

(c) Any member or broker or dealer may make an application to the Corporation requesting continuance in or admission to membership notwithstanding the disqualification. If an application is filed with the Corporation, the applicant and any person whose association with the applicant gives or would give rise to the disqualification shall be given an opportunity to be heard with respect to the application and shall demonstrate why the application should be granted. If requested, or if directed by the Corporation, a hearing shall be held before a committee comprised of at least one member of the appropriate District Committee and at least one member of the Board of Governors, and a record shall be kept. Such committee shall make a recommendation as to the application which shall be forwarded to the Board of Governors together with the record.

(d) The Board of Governors shall make a written determination upon the record before it, setting forth therein the specific grounds upon which such determination is based and the conditions, if any, as to the continuance in or admission to membership it considers appropriate.

(e) The Board of Governors shall promptly notify the applicant of any action taken. When appropriate, an application shall be promptly filed with the Commission pursuant to Section 15A of the Act. Any applicant or person who is aggrieved by the action of the Board of Governors may make application for review of such action to the Commission pursuant to Section 15A of the Act.

Explanation

The existing provisions have been incorporated into proposed Article II, Section 3 of the By-Laws and the proposed Code of Procedure previously circulated to the membership for comment and currently on file with the Commission for approval.

**ARTICLE XV IV**

**Registration of Registered Representatives and Associated Persons**

**"Registered Representative"**

**Sec. 1:** The term "registered representative" means any person associated with a member who has demonstrated his qualifications to engage in the investment banking or securities business regardless of his designation as either a principal or a representative of the member pursuant to the provisions of Schedule "C" of these By-Laws.

Explanation

The definition is being eliminated because portions of this Article are applicable to unregistered associated persons and because the persons required to be registered are already defined by Schedule C to the By-Laws.

**Compliance with Schedule "C"**

Qualification Requirements

**Sec. 2 1.** No member shall permit any person associated with such member to engage in the investment banking or securities business unless the member determines that such person has complied with the applicable provisions of Schedule "C," if applicable Article II of the By-Laws.

Explanation

The changes are primarily for clarity and to reflect the broadened scope of this Article to the By-Laws as noted in the comment above.

**Application for Registration**

**Sec. 32.** (a) Application by any person for registration with the Corporation, properly signed by the applicant, shall be made to the Board of Governors, Corporation, on the form to be prescribed by the Board of Governors and shall contain:

(1) A an acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions and covenants of the Certificate of Incorporation, the By-Laws, the rules and regulations rules of the Corporation as they are or may from time to time be adopted, changed or amended, and all rulings, orders, directions and decisions of, and penalties imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board; provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;

(2) A an agreement that neither the Corporation, nor any officer or employee thereof, nor any member of the Board of Governors or of any District or other Committee, shall be liable except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer, or member of the Board of Governors or of any District or other Committee in his official capacity, or by any employee of the Corporation while acting within the scope of his employment, or under instruction of any officer, board, or committee of the Corporation, in connection with the administration or enforcement of any of the provisions of the By-Laws, any of the rules or regulations rules of the Corporation as they are or may from time to time be adopted, changed or amended, as any ruling, order, direction, decision of, or penalty imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, or the rules of the Municipal Securities Rulemaking Board; ; and

(3) Such other reasonable information with respect to the applicant as the Board of Governors Corporation may require.

(b) The Board of Governors Corporation shall not accept an application for registration of any person who would not be qualified to be a member under the

provisions of Section 2 of Article I Section 3(b) of Article II of these By-Laws or who has failed to comply with the applicable requirements of Schedule "C."

(c) Every applicant whose application for registration is accepted by the Board of Governors shall sign the By-Laws of the Corporation provided that the signature of any such applicant may be affixed to an instrument incorporating the By-Laws by reference and shall become registered as of the date of any such acceptance.

(c) Each registered person is required to insure that the application for registration with the Corporation is kept current at all times by supplementary amendments to the original application.

#### Explanation

The section has been amended to conform to sections 15A(b)(7) and 19(g) of the 1934 Act, added by the Securities Acts Amendments of 1975 which provide that the Association shall enforce compliance by associated persons of members with, in addition to its own rules, the '34 Act, Commission rules and regulations thereunder and rules of the Municipal Securities Rulemaking Board. Subsection (c) is deleted because persons associated with members are required to comply with the By-Laws irrespective of whether they have signed them.

#### Voluntary Resignation of Registered Representative

Sec. 4(a) Registration with the Corporation of any person associated with a member may be voluntarily terminated at any time but only by formal resignation in writing and addressed to the Board of Governors. The Board of Governors shall immediately notify the member employing such person. Such resignation (subject to Section 6) shall not take effect until 30 days after receipt by the Board of Governors of such written resignation or so long as any complaint or action is pending against a member and to which complaint or action such person associated with the member is also a respondent; or so long as any complaint or action is pending against such person individually or so long as any examination of the member or person associated with such member is in process. The Board of Governors, however, may in its discretion declare the resignation effective at any time.



(b) A person whose association with a member has been voluntarily terminated pursuant to subsection (a) hereof, shall continue to be subject to the filing of a complaint by the Corporation based upon conduct which commenced prior to the effective date of voluntary termination. Any such complaint, however, shall be filed within one year after the effective date of such termination.

Explanation

The provision is no longer consistent with existing practice. Although the Association forwards resignations from registered persons to an employer-member, it will only process terminations received directly from members.

Notification by Member to Board Corporation of Termination

Sec. 5(a) 3 No person associated with a member who is registered with the corporation may transfer his registration or any right arising therefrom. Promptly upon, but in no event later than thirty (30) calendar days after Following the termination of the association with a member of a person who is registered with it, such member shall promptly, but in no event later than thirty (30) calendar days after such termination. give written notice to the Association on a form designated by the Board of Governors of the termination of such association. A member who does not submit such notification in writing within the time period prescribed shall be assessed a late filing fee as specified by the Board of Governors. Termination of registration (subject to Section 6) of such person associated with a member shall not take effect until thirty (30) days after receipt thereof by the Board of Governors nor so long as any complaint or action is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually or so long as any examination of the member or person associated with such member is in process. The Board of Governors, however, may in its discretion declare the resignation termination effective at any time.

(b) A person whose association with a member is terminated pursuant to subsection (a) hereof, shall continue to be subject to the filing of a complaint by the

Corporation based upon conduct which commenced prior to the effective date of termination. Any such complaint, however, shall be filed within one year after the effective date of such termination.

Explanation

The deleted language under existing subsection (b) has been moved to new Section 4.

Subject to Complaint or Action

~~Sec. 6~~ Any person associated with a member of the Corporation shall be subject to any complaint or action brought against such person individually and/or against any member with whom he has at any time been associated.

Explanation

The provision appears redundant in light of other provisions of the By-Laws.

[New Section 4 is a complete rewording of existing Sections 4(b) and 5(b) of Article XV of the By-Laws.]

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated shall continue to be subject to the filing of a complaint by the Corporation based upon conduct which commenced prior to the termination, but any such complaint shall be filed within one (1) year after the effective date of termination. For purposes hereof, the effective date of termination shall mean the effective date of termination of registration pursuant to Sections 3 or 4 above or, in the case of an unregistered person, the date upon which such person ceased to be associated with any member.

Explanation

The new section incorporates the provisions of present Sections 4(b) and 5(b) which authorize the Association to file complaints against former registered persons of members within a year of the effective date of termination of registration. The provision has also been extended to apply to complaints filed against former associated persons who were never required to be registered because of the nature of their duties with a member.

## **ARTICLE H V**

### **Affiliates**

#### **Qualifications for Affiliation**

**Sec. 1.** Any association of brokers or dealers, registered with the Commission as an affiliated securities association under the provisions of Section 15A of the Act, may become an affiliate of the Corporation as hereinafter provided in this Article.

#### **Application for Admission as Affiliate**

**Sec. 2.** Application for admission as an affiliate shall be made to the Board of Governors in writing, in such form as the Board of Governors may prescribe, and shall contain a certified copy of the application to the Commission for registration as an affiliated securities association, a certified copy of the order of the Commission granting such registration, and such other reasonable information as the Board of Governors may require.

#### **Agreement of Affiliate**

**Sec. 3.** No applicant may become an affiliate of the Corporation unless it agrees:

(a) That it will classify its members, for purposes of levying dues and assessments, on the same basis as that applicable to members of the corporation and that the amount of dues or assessments payable by each of its members for any given period, based on such classification, shall not be lower than that payable by a member of the Corporation in the same class for the comparable period; provided, however, that if by reason of the special type of business conducted by members of an applicant, the foregoing agreement is impracticable of application to such applicant, such applicant shall agree that it will fix and levy dues or assessments payable by its members on some other basis to be agreed upon by the applicant and the Board of Governors of the Corporation, which shall be fair and equitable in view of the dues and assessments payable by members of the Corporation.

(b) That it will pay the Corporation annually, in the form of dues or otherwise, for services to be rendered by the Corporation to the applicant, the amount to be agreed upon by the applicant and the Board of Governors of the Corporation annually in advance, and that should the applicant and the Corporation be unable to reach an agreement as to an appropriate amount, the applicant will consent to the submission of the controversy to the Commission for arbitration, and that if submitted, it will abide by the Commission's decision thereon;

(c) That, after affiliation, it will at all times keep its charter, by-laws, rules of fair practice and code of procedures so integrated with the corresponding Charter, By-Laws, Rules of Fair Practice and Code of Procedure of the Corporation as not to conflict in any way therewith; and

(d) That the Board of Governors, in accordance with the provisions of Section 6 of this Article, may at any time suspend or cancel its affiliation with the Corporation.

#### Conditions of Affiliation

Sec. 4. No applicant may become an affiliate of the Corporation unless it appears to the Board of Governors:

(a) That such applicant is so organized and is of such a character as to be able to comply with and carry out its purposes, and those of the Corporation and of Section 15A of the Act; and

(b) That the charter, by-laws, rules of fair practice and code of procedure of the applicant are so integrated with the corresponding Charter, By-Laws, Rules of Fair Practice and Code of Procedure of the Corporation as not to conflict in any way therewith.

#### Approval of Admission as an Affiliate

Sec. 5. If it appears to the Board of Governors that the foregoing requirements of this Article are met by the applicant, it shall approve such applicant's admission as an

affiliate; otherwise, after appropriate notice and opportunity for hearing, it shall disapprove such application in writing and shall set forth therein the specific grounds upon which such disapproval is based.

#### Suspension or Cancellation of Affiliation

Sec. 6. The Board of Governors may at any time suspend or cancel the affiliation of an affiliate with the Corporation if the Board of Governors finds that the affiliate has ceased to be of such a character as to be able to or has failed to carry out its purposes or the purposes of Section 15A of the Act, or has failed to carry out any of the conditions of affiliation. In any proceeding, however, under this Section to determine whether the affiliation of an affiliate should be suspended or canceled, specific charges shall be brought; such affiliate shall be notified of, and be given an opportunity to defend against, such charges; a record shall be kept; and any determination that the affiliation of an affiliate shall be suspended or canceled shall be in writing and shall set forth therein the specific grounds upon which such determination is based. Such suspension or expulsion shall take effect upon the 60th day after the filing with the Commission of notice thereof and a copy of the record of the proceedings before the Board of Governors, unless within thirty days after such filing such suspension or cancellation is disapproved by the Commission.

#### Exclusion of Territory Covered by Affiliated Association

Sec. 7. The Board of Governors shall, if it deems such action to be in the interest of efficient and economical administration and desirable in carrying out the purposes of Section 15A of the Act, recommend appropriate changes in the By-Laws to exclude the territory covered by an affiliate association from the geographical area covered by the Corporation.

**ARTICLE III VI**

**Dues, Assessments and Other Charges**

**Power of Board to Fix and Levy Assessments**

Sec. 1. The Board of Governors shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the Corporation each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments and other charges to be paid by members of the Corporation and issuers and any other persons using any facility or system which the Corporation operates or controls. Fees, dues, assessments and other charges shall be called and payable as determined by the Board of Governors from time to time; provided, however, that such charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the Corporation operates or controls. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the Board of Governors may make such adjustment in the fees, dues, assessments or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances. ~~The amount of admission fees, dues, assessments and other charges to be paid by the membership to the Corporation shall be set forth in Schedule A attached to and made a part of these By-Laws.~~ The Board of Governors may from time to time make such changes in Schedule A such fees, dues, assessments and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. Neither the adoption nor any ~~No such change in Schedule A such fees, dues, assessments and other charges~~ need be submitted to the membership for approval to become effective, as would otherwise be required by Article IX hereof, but any such proposed change shall be filed with the Commission in accordance with Section 15A of the Act, and unless it is disapproved by the Commission as therein provided, it and such fees, dues, assessments

and other charges as adopted or amended shall become effective at such time as the Board of Governors may prescribe.

#### Explanation

The amendments conform to Section 15A(b)(5) of the 1934 Act, added by the Securities Acts Amendments of 1975, which authorizes the Association to impose charges upon, in addition to its members, issuers and persons using any facility or system operated or controlled by the Association. It is proposed that Schedule A will be moved to a new portion of the Manual.

#### Reports of Members

Sec. 2. (a) Each member, issuer or other person shall promptly furnish all information or reports requested by the Board of Governors in connection with the determination of the amount of admission fees, dues, assessments or other charges payable by members during any given fiscal year.

(b) Each member shall report promptly such information in connection with securities for which quotations are displayed on the NASDAQ System as the Board of Governors deems appropriate.

#### Explanation

The provision has been expanded to reflect NASDAQ issuer fees.

#### Suspension or Cancellation of Membership for Non-Payment of Dues

Sec. 3. The Board of Governors, after fifteen (15) days notice in writing, may suspend or cancel the membership of any member in arrears in the payment of any fees, dues, assessments or other charges or for failure to furnish any information or reports requested pursuant to Section 2 of this Article.

#### Reinstatement of Membership

Sec. 4 4. Any membership suspended or canceled under this Article may be reinstated by the Board of Governors upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement shall possess the qualifications required for membership in the Corporation.

Membership List Showing Dues-Paying  
Classification

Sec.5 5. As soon as practicable after the annual levy provided for in Section 1 of this Article, the Secretary of the Corporation shall prepare a list of the members of the Corporation which shall disclose the dues-paying classification of each member and ~~such list shall~~ be available for inspection by any member of the Corporation or his duly authorized representative during business hours at the main office of the Corporation.

Explanation

The change is purely grammatical.

**ARTICLE IV VII**

**Organization and Administration**

Administrative Districts

Sec. 1. For the purpose of administration, the ~~several states of the~~ United States ~~are~~ is hereby divided into districts, the boundaries of which ~~are set forth in Schedule B;~~ ~~appended hereto~~ shall be established by the Board of Governors. The Board of Governors may from time to time make such changes in Schedule B the boundaries as it deems necessary or appropriate. Neither the establishment nor any ~~No~~ such change in Schedule B the boundaries need be submitted to the membership for approval, ~~as would otherwise be required by Article IX hereof;~~ and the boundaries, as established or changed, but a copy of any such proposed change shall be filed with the Commission in accordance with Section 15A of the Act and unless it is disapproved by the Commission as therein provided; it shall become effective ~~as~~ at such time as the Board of Governors may prescribe.

Explanation

The changes are largely technical. It is also proposed that the content of Schedule B will be transferred to a new portion of the Manual where all the By-Law schedules will appear together.

Powers and Authority of Board of Governors

Sec. 2. (a) The management and administration of the affairs of the Corporation shall be vested in a Board of Governors composed of thirty-one members, twenty-



one to be elected by the members of the various district in accordance with the provisions of Sections 3(a) through (e), of this Article, nine to be elected by the Board of Governors in accordance with the provisions of Sections 3(f), (g) and (h) of this Article, and the President of the Corporation to be selected by the Board of Governors in accordance with the provisions of Article V VIII, Section 2.

(b) The Board of Governors shall be the governing body of the Corporation and, except as otherwise provided by these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the Corporation and the promotion of the Corporation's welfare, objects and purposes. In the exercise of such powers, the Board of Governors ~~may~~, shall have the authority to:

(1) adopt for submission to the membership, as hereinafter provided, such By-Laws, Rules of Fair Practice and changes or additions thereto as it deems necessary or appropriate;

(2) make such regulations, issue such orders, resolutions, interpretations and directions, and make such decisions as it deems necessary or appropriate;

(3) prescribe maximum penalties for violations of the provisions of these By-Laws; ~~the rules and regulations~~ and rules of the Corporation, for neglect or refusal to comply with orders, directions and decisions of the Board of Governors or of any District Committee or other Committee; ~~or for violation of any rule or regulation adopted by any District Committee; as provided in Section 2 of Article VII hereof;~~ and

(4) prescribe a code of arbitration procedure providing for the required or voluntary arbitration of controversies between members and between members and customers or others as it shall deem necessary or appropriate to the extent consistent with law, and neither the adoption nor any amendments to the code need be submitted to the membership for approval and the code and any amendments thereto shall become effective as the Board of Governors may prescribe;

(5) establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof, and neither the adoption nor any amendments to such rules and procedures need be submitted to the membership for approval and such rules and procedures and any amendments thereto shall become effective as the Board of Governors may prescribe;

(6) require all over-the-counter transactions in securities between members to be cleared and settled through the facilities of a clearing agency registered with the Commission pursuant to the Act, which clears and settles such over-the-counter transactions in securities;

(7) engage in any activities or conduct necessary or appropriate to carry out the Corporation's purposes under its Certificate of Incorporation and the federal securities laws; and

(c) The Board of Governors shall have the authority to establish rules and procedures to be followed by members in connection with the distribution of issues of securities in a member corporation and affiliates thereof as defined by the Board of Governors. Such rules and procedures shall be incorporated into Schedule E to be attached to and made a part of these By-Laws. The Board of Governors shall have the power to adopt, alter, amend, supplement or modify the provisions of Schedule E from time to time without recourse to the membership for approval as would otherwise be required by Article IX hereof and Schedule E, as adopted, altered, amended, supplemented or modified shall become effective as the Board of Governors may prescribe unless disapproved by the Commission.

(8) organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the Corporation or by one or more independent firms under contract with the Corporation as the Board of Governors may deem necessary or appropriate. The Board of Governors may adopt rules

for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide standards for securities, and establish charges to be collected from subscribers and others. The Board of Governors shall have power to adopt, amend, supplement or modify such rules, qualifications, classifications, standards and charges from time to time without recourse to the membership for approval, and such rules, qualifications, classifications, standards and charges shall become effective as the Board of Governors may prescribe.

(d) In the event of the refusal, failure, neglect or inability of any member of the Board of Governors to discharge his duties, or for any cause affecting the best interests of the Corporation the sufficiency of which the Board of Governors shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such member and declare his position vacant and that it shall be filled in accordance with the provisions of Section 7 of this Article.

#### Explanation

The authority of the Board to establish automated systems in new subsection (c) has been transferred from existing Article XVI and new subsection (b)(6) concerning use of clearing agencies has been transferred from existing Article XVII of the By-Laws. New subsection (b)(7) is intended to clarify that the Board has full power to engage in any lawful activities as prescribed by its Certificate of Incorporation and the provisions of the federal securities laws.

#### Authority to Suspend for Failure

##### to File Regulatory Reports

Sec. 3(a) The Board of Governors shall have authority to cancel or suspend the membership of any member or suspend the association of any person associated with a member for failure to file, or to submit on request, any report, document or other information required to be filed with or requested by the Corporation. Before such cancellation or suspension shall become effective, the member or person associated with a member shall be given fifteen (15) days notice in writing thereof.

(b) The Board of Governors is authorized to delegate the authority herein above granted to the President of the Corporation; provided, however, that the Executive

Committee of the Board of Governors shall be notified in writing of any such contemplated action by the President.

Explanation

New subsection (a) makes clear that the Board has authority to suspend or cancel the membership of a firm and suspend the association of a person associated with a member for failure to file any report or other information required to be filed or for failure to honor a request for information. New subsection (b) authorizing the Board to delegate its authority to suspend or cancel parallels the existing procedure under Article IV, Section 5 of the Rules of Fair Practice respecting suspension for refusal by a member to permit inspection of its books and records.

**Representation of Districts on Board**

Composition of Board

Sec. 3 4. The several districts shall be represented on the Board of Governors. The elected members of the Board of Governors shall be chosen as follows:

(a) Three members of the Board of Governors shall be elected from and by the members of the Corporation having places of business in District No. 2;

(b) Two members of the Board of Governors shall be elected from and by the members of the Corporation having places of business in District No. 8;

(c) Five members of the Board of Governors shall be elected from and by the members of the Corporation having places of business in District No. 12;

(d) Two members of the Board of Governors shall be elected from and by the members of the Corporation having places of business in District No. 13.

(e) One member of the Board of Governors shall be elected from and by the members of the Corporation having places of business in each of the remaining districts not referred to in paragraphs subsections (a), (b), (c) and (d) of this Section.

(f) One member of the Board of Governors shall be elected by the Board of Governors from among the principal underwriter members of investment company shares, and he shall be designated Governor-at-Large.

(g) One member of the Board of Governors shall be elected by the Board of Governors from among insurance company members or insurance company affiliated members of the Association Corporation and he shall be designated Governor-at-Large.

(h) Seven members of the Board of Governors shall be elected by the Board of Governors and they shall be designated Governors-at-Large. Any Governor-at-Large initially filling a Governor-at-Large office shall be elected at such time as the Board of Governors in its discretion deems appropriate.

(i) At least one member of the Board of Governors shall be representative of issuers and investors and not be associated with a member, broker or dealer.

(j) The President of the Corporation shall also serve as a member of the Board of Governors.

~~(i)(k)~~ The Board of Governors shall, from time to time, consider the fairness of the representation of the various districts on the Board of Governors, and whenever it finds any unfairness in such representation to exist, it shall recommend appropriate changes in these By-laws to assure fair representation of all districts.

#### Explanation

In subsection (g) the word "Association" is deleted and replaced with the word "Corporation" for purposes of consistency. The proposed new subsection (i) implements Section 15A(b)(4) of the Act requiring that at least one member of the Board of Governors shall be representative of issuers and one of investors and shall not be affiliated with a broker/dealer. New subsection (j) has been transferred from existing Article V, Section 2 of the By-Laws.

#### Term of Office of Governors

Sec. 4 5. Each elected member of the Board of Governors, including the Governors-at-Large, except as otherwise herein provided, shall hold office for a term of three years, and until his successor is elected and qualified, or until his death, resignation or removal. The President of the Corporation shall serve as a member of the Board of Governors until his successor is selected and qualified, or until his death, resignation or removal.

### Succession to Office

Sec. 5 6. The office of a retiring member of the Board of Governors elected under Section 3 subsections (a) through (e) of Section 4 of this Article shall be filled by the election of a member from the same district as that of the retiring member. The office of a retiring Governor-at-Large shall be filled by election by the Board of Governors as provided in Section 3 subsections (f), (g) and/or (h) of Section 4 of this Article, as the case may be.

### Election of Board Members

Sec. 6 7. The elected members of the Board of Governors shall be chosen as follows:

#### Procedure for Nominations by Nominating Committees

(a) Before June 1 of each year, the Secretary of the Corporation shall cause notice to be given to notify in writing the Chairman of the respective District Committees of the expiration of the term of office of any member of the Board of Governors elected under Section 3 subsections (a) through (e) of Section 4 of this Article which will expire during the next calendar year. The said Chairman shall thereupon notify the Nominating Committee elected for such District pursuant to the provisions of Section 2223 of this Article and such Nominating Committee shall proceed to nominate a candidate from such District for the office of each such member of the Board of Governors whose term is to expire. Nominating Committees in nominating candidates for the office of member of the Board of Governors shall endeavor, as nearly as practicable, to secure appropriate and fair representation on the Board of Governors, of all classes and types of firms engaged in the investment banking and securities business. nNo Nominating Committee shall nominate an incumbent member of the Board of Governors to succeed himself unless it first takes appropriate action (by a written ballot sent to the entire membership within the District) to ascertain that such nomination is acceptable to a majority of the members voting on such ballot in the District except where the incumbent member

of the Board of Governors is serving pursuant to the provisions of Section 8(a) of this Article. Each candidate nominated by the Nominating Committee shall be certified to the District Committee by September 1 and within five (5) days thereafter a copy of such certification shall be sent by the District Committee to each member of the Corporation having a place of business in the district. Such candidate shall be designated the "regular candidate."

#### Nomination of additional candidates

(b) Ten per cent or more of the members of the Corporation having places of business in the district may nominate a An additional candidate or candidates may be nominated for the office of any member elected under Section 3 subsections (a) through (e) of Section 4 of this Article, and whose term is to expire, if written notice thereof in writing of the nomination, signed by the required number of members at least ten per cent of the members of the Corporation having places of business in the district, is filed with the District Committee within thirty (30) days from the date of the notice of the action taken by the Nominating Committee. If no additional candidate or candidates are nominated within such thirty-day period, the candidate or candidates nominated by the Nominating Committee shall be considered duly elected, and the District Committee shall certify the election to the Board of Governors.

#### Contested elections

(c) If any additional candidate or candidates are nominated, as provided in paragraph subsection (b) of this Section, the District Committee shall forthwith cause the names of the regular candidate and of all other duly nominated candidates for each office to be placed upon a ballot, which shall be sent to all members of the Corporation having places of business in the district. Each member of the Corporation having its principal place of business in the district shall be entitled to one vote, and each member having one or more registered branch offices in the district shall be entitled to vote as provided in Section 7 of Article I III. The District Committee shall fix a date before

which ballots must be returned to be counted. All ballots shall be opened and counted by such officer or employee of the District Committee as its Chairman may designate and in the presence of a representative of each of the candidates if such representation is requested in writing by any candidate voted upon. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the Board of Governors, and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be a run-off election. In all elections held under this paragraph subsection voting shall be made by secret ballot, the procedure for which shall be prescribed by the Board of Governors.

Explanation

Subsection (a) would be amended to eliminate the requirement of an advance ballot to the membership before a District Nominating Committee may nominate an incumbent member of the Board to succeed himself in the case where the incumbent is filling a vacancy with an unexpired term of less than one year. The other changes are clarifying.

Filling of Vacancies on Board

Sec. 7 8. All vacancies in the Board of Governors other than those caused by the expiration of a Governor's term of office, shall be filled as follows:

(a) If the unexpired term of a Governor elected under Sections 3 subsections (a) through (e) of Section 4 of this Article, is for less than twelve months, such vacancy shall be filled by appointment by the District Committee of a member of the Corporation having a place of business in the same district.

(b) If the unexpired term of a Governor, elected under Sections 3 subsections (a) through (e) of Section 4 of this Article, is for twelve months or more, such vacancy shall be filled by election, which shall be conducted as nearly as practicable in accordance with the provisions of Section 67 of this Article.

(c) If the unexpired term is that of a Governor-at-Large, such vacancy shall be filled in accordance with the provisions of Section 3 subsections (f), (g) and/or (h) of Section 4 of this Article as the case may be.



### Meetings of Board

Sec. ~~8~~ 9. Meetings of the Board of Governors shall be held at such times and places, upon such notice, and in accordance with such procedure as the Board of Governors in its discretion may determine. A quorum of the Board of Governors shall consist of **fourteen a majority of the** members, and any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Board. Meetings of the Board of Governors may be held by mail, telephone or telegraph, in which case any action taken by a majority vote of the Board of Governors shall constitute the action of the Board. Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the Board of the Governors.

#### Explanation

The change in the quorum requirement to a majority of the Board members is intended to reflect the fact that the number of Board members has increased in recent years. The other changes are clarifying and to conform to existing practice.

### Offices of Corporation

Sec. ~~9~~ 10. The Corporation shall maintain such offices as the Board of Governors may from time to time deem necessary or appropriate.

### District Committees

Sec. ~~10~~ 11. (a) For the purpose of effectuating a maximum degree of local administration of the affairs of the Corporation, each of the districts created under Section 1 of this Article shall elect a District Committee, as hereinafter provided. Each such District Committee shall determine the number of its members so to be elected, but in no event shall any District Committee consist of more than twelve members; provided, however, that the Board of Governors by resolution may increase, upon request, any such District Committee to a larger number.

(b) In the event of the refusal, failure, neglect or inability of any member of any District Committee to discharge his duties, or for any cause affecting the best interests of the Corporation the sufficiency of which shall be decided by the

District Committee, the District Committee shall have the power by the affirmative vote of two-thirds of the members of the District Committee then in office, to remove such member and declare his position vacant and that it shall be filled in accordance with the provisions of Section ~~11~~14 of this Article; provided, however, that any member of any District Committee who has had his position declared vacant in the manner provided herein shall have the right to appeal the determination of the District Committee to the Board of Governors within 30 days after the date he is notified of the action of the District Committee. The Board of Governors shall thereafter have the authority to affirm, reverse or modify the determination of the District Committee. Any such action by the Board shall be by the affirmative vote of at least two-thirds of the governors then in office.

(c) The District Committees shall also serve as the District Business Conduct Committees for their respective districts.

#### Explanation

The language added by new subsection (c) reflects the fact that the persons who comprise the District Committees and the District Business Conduct Committees are the same persons. The change is made in conjunction with the elimination of existing Section 3 of Article VI of the By-Laws requiring that the District Committees go through the procedure of appointing District Business Conduct Committees.

#### Term of Office of District Committeemen

Sec. ~~11~~ 12. Each regularly elected member of a District Committee shall hold office for a term of three (3) years, and until his successor is elected and qualified, or until his death, resignation or removal.

#### Election of District Committeemen

Sec. ~~12~~ 13. Members of the District Committees shall be elected as follows:

#### Procedure for Nominations by Nominating Committees

(a) Before June 1 of each year, the Secretary of the Corporation shall **cause notice to be given to notify in writing the Chairman of ~~the~~ each respective District Committees of the expiration of the term of office of any member of that District**

Committee which shall expire during the next calendar year. The said Chairman shall thereafter, but not later than July 1, advise the Nominating Committee, which shall proceed to nominate a candidate from their District for the office of each member of the District Committee whose term is to expire. Nominating Committees in nominating candidates for the office of member of the District Committee shall endeavor, as nearly as practicable, to secure appropriate and fair representation on the District Committee of the various sections of the District and of all classes and types of firms engaged in the investment banking or securities business within such District; and N no Nominating Committee shall nominate an incumbent member of the District Committee to succeed himself unless it first takes appropriate action (by a written ballot of the entire membership within the District) to ascertain that such nomination is acceptable to a majority of the members in the District except where the incumbent member of the District Committee is serving pursuant to the provisions of Section 14(a) of this Article. Each candidate nominated by the Nominating Committee shall be certified to the District Committee, by September 1, and within five (5) days thereafter a copy of such certification shall be sent by the District Committee to each member of the Corporation having a place of business in the District. Such candidate shall be designated the "regular candidate."

Nomination of additional candidates

(b) Ten per cent or more of the members of the Corporation having places of business in the district may nominate a An additional candidate or candidates may be nominated for the office of any member whose term is to expire or for any new office created by the District Committee pursuant to Section 10 of this Article, if written notice thereof in writing of the nomination, signed by the required number of members at least ten percent of the members of the Corporation having places of business in the district, is filed with the District Committee within thirty (30) days from the date of the notice of the action taken by the Nominating Committee. If no additional candidate or candidates are nominated within such thirty-day period, then the

candidate or candidates nominated by the Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board of Governors.

#### Contested elections

(c) If any additional candidate or candidates are nominated, as provided in paragraph (b) of this Section, the District Committee shall forthwith cause the names of the regular candidate for any contested office and of all other candidates for such office to be placed upon a ballot, which shall be sent to all members of the Corporation having places of business in the district. Each member of the Corporation having its principal place of business in the district shall be entitled to one vote, and each member having one or more registered branch offices in the district shall be entitled to vote as provided in Section ~~10~~ 8 of Article III. The District Committee shall fix the date before which ballots must be returned to be counted. All ballots shall be opened by such officer or employee of the District Committee as its Chairman may designate, and in the presence of a representative of each of the candidates if such representation is requested in writing by any candidate voted upon. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the District Committee, and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be a run-off election. In all elections held under this Section, voting shall be by secret mail ballot, the procedure for which shall be prescribed by the Board of Governors.

#### Explanation

Subsection (a) would be amended to eliminate the requirement for an advance ballot to the membership before a District nominating Committee may nominate an incumbent member of the District Committee to succeed himself in the case where the incumbent is filling a vacancy with an unexpired term of less than one year. The other changes are clarifying.

### Filling of Vacancies on District Committees

Sec. ~~13~~ 14. All vacancies in any District Committee other than those caused by the expiration of a member's term of office, shall be filled as follows:

(a) If the unexpired term of the member causing the vacancy is for less than ~~six~~ twelve months, such vacancy shall be filled by appointment by the remaining members of the District Committee of some member of the Corporation having a place of business in the same district.

(b) If the unexpired term of the member causing the vacancy is for ~~six~~ twelve months or more, such vacancy shall be filled by election, which shall be conducted as nearly as practicable in accordance with the provisions of Section ~~12~~13 of this Article.

### Explanation

The change in the authority of the District Committees to fill vacancies by appointment is extended to cases where the unexpired term is for less than one year in order to be consistent with the existing authority of the Board to fill vacancies under Article IV, Section 7 of the present By-Laws.

### Meetings of District Committees

Sec. ~~14~~ 15. Meetings of each District Committee shall be held at such times and places, upon such notice, and in accordance with such procedure as each District Committee in its discretion may determine. A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority at any meeting at which a quorum is present, except as otherwise provided in the By-Laws, shall constitute the action of the Committee. Action by a District Committee may be taken by mail, telephonic or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee.

Explanation

The change incorporates desirable practice with respect to confirmation of telephone votes.

Election of Chairmen and Other District Officers

Sec. ~~15~~ 16. Following the annual election of members of the District Committee pursuant to Section ~~12~~13 of this Article, each District Committee shall elect from its members a Chairman and such other officers as it deems necessary for the proper performance of its duties under these By-Laws and shall prescribe their powers and duties.

Advisory Council

Sec. ~~16~~ 17. (a) The ~~Chairman~~ Chairmen of the ~~several~~ District Committees, elected pursuant to Section ~~15~~16 of this Article, shall constitute an Advisory Council to the Board of Governors~~;~~.

(b) Such Advisory Council shall be advised of and entitled to attend such meetings of the Board of Governors as the Board may designate and the Board shall designate at least one such meeting annually; ~~but such~~ The Advisory Council shall not ~~there~~ be entitled to vote at meetings of the Board of Governors.

Explanation

The changes are clarifying.

Expenses of District Committees

Sec. ~~17~~ 18. Funds to meet the regular expenses of each District Committee elected pursuant to Section ~~12~~13 of this Article, shall be provided by the Board of Governors out of funds collected by it under the provisions of Article ~~III~~ VI hereof, and all such expenses shall be subject to the approval of the Board of Governors.

District Committees Agencies of Corporation

Sec. ~~18~~ 19. The District Committees shall act as the agencies of the Corporation for the administration of its affairs in their respective districts and as such shall have such powers and duties as are provided in the By-Laws or from time to time delegated by the Board of Governors.

### Certain Functions of District Committees

Sec. ~~19~~ 20. District Committee shall endeavor, in such manner ~~or through such media~~ as they deem appropriate, to educate members and other dealers in their respective districts as to the objects, purposes and work of the Corporation in order to foster their interest and ~~friendly~~ cooperation. District Committees shall consider the practical operation of all provisions of the ~~Certificate of Incorporation, By-Laws, Rules of Fair Practice and Code of Procedure of the Corporation~~ and rules of the Corporation and shall report to the Secretary any which do not work satisfactorily in their respective districts.

#### Explanation

The changes are primarily to incorporate the new definition of "rules of the Corporation" appearing in Article I, Section (n) hereof.

#### Nominating Committees

Sec. ~~20~~ 21. (a) Each of the Districts created under Section 1 of this Article shall elect a Nominating Committee, as provided in Section ~~22~~ 23 hereafter of this Article. Each such Nominating Committee shall consist of five members; provided, however, that the Board of Governors by resolution may increase any such Nominating Committee to a larger number. Members of the Nominating Committee in each District shall be members of the Corporation having places of business in the respective District, but shall not be members of the District Committee. All Nominating Committees shall include a majority of persons who have previously served on the District Committee and/or on the Board of Governors and shall, insofar as practicable, include at least one former member of the Board of Governors.

(b) In the event of the refusal, failure, neglect or inability of any member of any Nominating Committee to discharge his duties, or for any cause effecting the best interest of the Corporation, the sufficiency of which shall be decided by the Nominating Committee, the Nominating committee shall have the power, by the affirmative vote of ~~3/5~~ three-fifths of the members of the Nominating Committee then in office, to remove such member and declare his position vacant and that it shall be filled

in accordance with the provisions of Section ~~22~~23 of this Article; provided, however, that any member of any Nominating Committee who has had his position declared vacant in the manner provided herein shall have the right to submit a written appeal in respect to the determination of the Nominating Committee to the Board of Governors within ~~30~~ thirty (30) days after the date he is notified in writing of the action of the Nominating Committee. The Board of Governors shall thereafter have the authority to affirm, reverse or modify the determination of the Nominating Committee. A vote of ~~2/3's~~ two-thirds of the Governors then in office shall be required to reverse or modify the action of the Nominating Committee.

#### Explanation

The changes are proposed for purposes of clarity and to codify a resolution of the Board of Governors adopted at the September 1982 meeting.

#### Term of Office of Nominating Committeemen

Sec. ~~21~~ 22. Each regularly elected member of a Nominating Committee shall hold office for a term of one (1) calendar year, and until his successor is elected and qualified, or until his death, resignation or removal.

#### Election of Nominating Committees

Sec. ~~22~~ 23. Members of the Nominating Committee shall be elected as follows:

#### Procedures for Nominations by Nominating Committees

(a) Before June 1 of each year the Secretary of the Corporation shall **cause notice to be given to notify in writing** the Chairmen of the respective District Committees as to those members of the District Nominating Committee who were elected for the present year and as to the offices of that Committee that are to be filled by the next election. The said Chairman shall thereupon notify the Nominating Committee elected for such District and the Nominating Committee shall proceed to nominate a candidate from such District for the offices of that Committee which are to be filled by the next election. The Nominating Committee in nominating candidates for the office of member of the Nominating Committee shall endeavor, as nearly as practicable, to secure



appropriate and fair representation on the Nominating Committee of the various sections of the District and of all classes and types of firms engaged in the investment banking or securities business within such District and shall assure that the composition of the Nominating Committee meets the standards contained in Section 21(a) of this Article; and.nNo Nominating Committee shall nominate more than two incumbent members of the Nominating Committee to succeed themselves. No member of any Nominating Committee may serve more than two consecutive terms. Each candidate nominated by the Nominating Committee shall be certified to the District Committee, by September 1, and within five (5) days thereafter a copy of such certification shall be sent by the District Committee to each member of the Corporation having a place of business in the District. Such candidate shall be designated the "regular candidate."

#### Nomination of Additional Candidates

(b) Ten percent or more of the members of the Corporation having places of business in the district may nominate an aAdditional candidate candidates may be nominated for the office of any member whose term is to expire or for any new office created by the Board of Governors pursuant to Section ~~20~~21(a) of this Article, provided that election of such candidates would be consistent with the requirements of Section 21(a) of this Article, if written notice thereof in writing of the nomination, signed by the required number of at least ten percent of the members of the Corporation having places of business in the district, is filed with the District Committee within thirty (30) days from the date of the notice to the members of the action taken by the Nominating Committee. If no additional candidate or candidates are nominated within such thirty-day period, then the candidate or candidates nominated by the nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board of Governors.

### Contested Elections

(c) If any additional candidate or candidates are nominated, as provided in paragraph (b) of this section, the District Committee shall forthwith cause the names of the regular candidate and all other candidates for any contested office ~~and of all other candidates for such~~ to be placed upon a ballot, which shall be sent to all members of the Corporation having places of business in the District. Each member of the Corporation having its principal place of business in the District shall be entitled to one vote, and each member having one or more registered branch offices in the District shall be entitled to vote as provided in Section ~~10~~ 7 of Article III. The District Committee shall fix the date before which ballots must be returned to be counted. All ballots shall be opened by such officer or employee of the District Committee as its Chairman may designate, and in the presence of a representative of each of the candidates, if such representation is requested in writing by any candidate voted upon. The candidate for each office to be filled receiving the largest number of votes cast shall be declared elected to membership on the Nominating Committee and certification thereof shall be made forthwith to the Board of Governors. In the event of a tie, there shall be a runoff election. In all elections held under this Section, voting shall be by secret mail ballot, the procedure for which shall be prescribed by the Board of Governors.

### Explanation

The proposed changes are for clarity and to reflect the composition of Nominating Committees under new language added to Section 21(a) above.

### Filling of Vacancies for Nominating Committees

Sec. ~~23~~ 24. All vacancies in any Nominating Committee other than those caused by the expiration of a member's term of office shall be filled as follows:

(a) If the unexpired term of the member causing the vacancy is for less than six months, such vacancy shall be filled by appointment by the remaining members of the Nominating Committee of some member of the Corporation having a place of business in the same District.

(b) If the unexpired term of the member causing the vacancy is for six months or more, such vacancy shall be filled by election, which shall be conducted as nearly as practicable in accordance with the provisions of Section ~~22~~23 of this Article.

#### Meetings of Nominating Committees

Sec. ~~24~~ 25. Meetings of each Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedure as each Nominating Committee in its discretion may determine. A quorum of a Nominating Committee shall consist of a majority of its members, and any action taken by a majority of the entire Committee at any meeting ~~at which a quorum is present~~, except as otherwise provided in the By-Laws, shall constitute the action of the Committee. Action by a Nominating Committee may be taken by mail, telephonic or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the Nominating Committee.

#### Explanation

The changes make clear that any final action by a Nominating Committee must be taken by a majority of the Committee members.

#### Election of Chairman and Other Nominating Committee Officers

Sec. ~~25~~ 26. Following the annual election of members of the Nominating Committees pursuant to Section ~~22~~ 23 of this Article, each Nominating Committee shall elect from its members a Chairman and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.

### **ARTICLE V VIII**

#### **Officers and Employees**

##### Election of Officers of the Board

Sec. 1. As soon as practicable, following the annual election of members to the Board of Governors, the Board of Governors shall elect from its members a Chairman,

one or more Vice Chairmen, and such other officers as it shall deem necessary or advisable, to serve until the next annual election and or until their successors are chosen and qualify. The officers so elected shall have such powers and duties as may be determined from time to time by the Board of Governors. The Board of Governors, by affirmative vote of fourteen a majority of its members, may remove any such officer at any time.

#### Officers of the Corporation

Sec. 2. The Board of Governors shall select a chief executive officer, to be designated President of the Corporation, who as such chief executive officer of the Association shall be responsible for the management and administration of its affairs and shall be the official representative of the Association Corporation in all public matters and shall be, ~~during his incumbancy,~~ a member of the Board of Governors and ex officio a member of any committee authorized by the Board of Governors. The Board may provide for other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to, Executive Vice-President, Senior Vice-President, Vice-President, General Counsel, Secretary and Treasurer of the Corporation. All such officers shall have such titles, such powers and duties and shall be entitled to such compensation as shall be determined from time to time by the Board of Governors. The terms of office of such officers shall be at the pleasure of the Board of Governors, which by affirmative vote of fourteen a majority of the members, may remove any such officer at any time.

#### Explanation

The changes expand the class of authorized officers and permit removal of any officer by a majority vote of the Board. The fact that the President shall serve as a member of the Board has been transferred to new Article VII, Section 4 of the By-Laws.

#### Absence of President

Sec. 3. In the case of the absence or inability to act of the President of the Corporation, or in case of a vacancy in such office, the Board of Governors may appoint

its Chairman or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

#### Employment of Counsel

Sec. 4. The Board of Governors may retain or authorize the employment of counsel, with such powers, titles, duties and authority as it shall deem necessary or advisable.

#### Administrative Staff

Sec. 5. The Board of Governors may employ or authorize the employment and prescribe the powers and duties of such an administrative staff as it deems necessary or advisable. The employment and compensation of such administrative staff of the Corporation shall be at the pleasure of the Board of Governors.

#### Restrictions on Compensation of Board and Committee Members

Sec. 6. No member of the Board of Governors, ~~(except the that member who is designated President of the Corporation as provided in Section 2 of this Article, or the President pro tem), as provided in Section 3 of this Article, or no member~~ of any District Committee ~~or of and no member of~~ any other Committee, shall be entitled to receive any compensation from the Corporation for any work done in connection with his duties as a member of the Board of Governors, any District Committee or any other committee, but However, ~~all~~ members of the Board of Governors, of the Advisory Council, of the District Committees, and of ~~all~~ other committees appointed either by the Board of Governors or by any District Committee, such persons shall be entitled to reimbursement for reasonable expenses incurred in connection with the business of the Corporation.

#### Explanation

Grammatical changes and a proposed revision which would permit payment by the Association for the performance of services unrelated to Board or committee activity such as acting as outside counsel to the Association.

**ARTICLE VI IX**

**Committees**

**National Standing Committees**

Sec. 1. The Board of Governors may appoint such standing and other committees as it deems necessary or desirable, and it shall fix their powers, duties and terms of office.

**District Standing Committees**

Sec. 2. Each District Committee, in the exercise of its powers and performance of its duties as provided in the By-Laws, may, except as otherwise herein provided, appoint such standing or other committees as it deems necessary or desirable, and shall fix their powers, duties and terms of office.

**District and Local Business Conduct Committees**

Sec. 3. Each District Committee annually shall appoint from among its members or members of the Corporation having places of business within the District, a District Business Conduct Committee of not more than twelve members; at least one member of which shall be a member of the District Committee; provided, however, that the Board of Governors by resolution may increase, upon request any such District Business Conduct Committee to a larger number. Each such committee shall function as the Business Conduct Committee of the Corporation in such District in accordance with the By-Laws, Rules of Fair Practice, and Code of Procedure for Handling Trade Practice Complaints. Each District Committee may also appoint such Local Business Conduct Committees as it deems necessary or appropriate and, wherever possible, at least one member of each such Local Business Conduct Committee shall be a member of the District Business Conduct Committee. Each such Local Business Conduct Committee shall function as a subcommittee of the District Business Conduct Committee in accordance with the By-Laws, the Rules of Fair Practice, and the Code of Procedure for Handling Trade Practice Complaints.

Explanation

The language concerning appointment of District Business Conduct Committee is being deleted because as a practical matter the members of the District Committees and District Business Conduct Committees are the same persons. The elimination of language concerning Local Business Conduct Committees is done because no such committees have been constituted as a practical matter.

Removal of Committeemen

Sec. ~~4~~ 3. Any member of any committee appointed pursuant to Sections 1, 2 or 3 of this Article may be removed from office, after appropriate notice from the District Committee appointing such member, or from the Board of Governors, if it is the appointing authority, for refusal, failure, neglect or inability to discharge his duties, or for any cause the sufficiency of which shall be decided by the District Committee or the Board of Governors, whichever is the appointing authority.

Executive Committee

Sec. 5 4. By resolution passed not less than annually by a majority of the entire Board of Governors, there may be created an Executive Committee consisting of five or more members of the Board, which ~~Committee~~ shall ~~have and may~~ exercise such of the powers of the Board in the management of ~~the business and affairs~~ of the Corporation in the ~~interim~~ between meetings of the Board of Governors as may be delegated to it from time to time by the Board. ~~Each~~ The Executive Committee created hereunder shall keep minutes of its meetings and shall report its proceedings to the Board of Governors at ~~each~~ the next meeting thereof.

Explanation

The amendment would require the Board to adopt a resolution appointing an Executive Committee at least once a year. The other changes are clarifying.

## ARTICLE VII X

### Rules of Fair Practice

#### Authority to Adopt Rules and Amendments— Submission to Members—Voting on Rules and Amendments

Sec. 1. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the Corporation, to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, to protect investors and the public interest, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Corporation and of Section 15A of the Act, the Board of Governors is hereby authorized to adopt for submission to the members of the Corporation such rRules of fFair pPractice for the members and persons associated with members, and such amendments thereto as it may, from time to time deem necessary or appropriate. The Board of Governors, upon the adoption of any such rRules of fFair pPractice or amendments thereto shall forthwith cause copies thereof to be sent to each member of the Corporation to be voted upon. If any such rRules of fFair pPractice or amendment thereto are approved by a majority of the members voting, within thirty (30) days after the date of submission to the membership, and are ~~not disapproved~~ approved by the Commission as provided in ~~Section 15A~~ of the Act, they shall become effective rRules of fFair pPractice of the Corporation as of such date as the Board of Governors may prescribe. In any case, however, where a particular section of the Rules of Fair Practice provides that membership approval is not required, the Board may amend that provision as provided subject to approval of the amendment by the Commission as provided by the 1934 Act. Also, where the Board of Governors by resolution finds an emergency to exist, such rRules of fFair pPractice or amendments thereto, if adopted by a two-thirds vote of the Board of Governors and ~~not disapproved~~ approved by the



Commission pursuant to Section 15A of the Act, may become effective as of such time as the Board of Governors may prescribe, without submission to the members for a vote as hereinbefore required. An emergency which is found by the Board of Governors to exist shall continue until the Board of Governors by resolution terminates such but in no event shall an emergency continue for a period in excess of six months. The Board of Governors shall have the authority, however, after, in each instance, reassessing the facts and circumstances which gave rise to the emergency, by resolution to declare, if it deems such appropriate under the facts and circumstances then existing, the emergency to continue to exist for successive six-month periods as required. All emergency rules adopted during the period of the emergency shall cease to be effective upon the termination of the emergency as hereinbefore provided. The Board of Governors is hereby authorized, subject to the provisions of the By-Laws and of Section 15A of the Act, to administer, enforce, suspend, or cancel any rRules of fFair pPractice adopted hereunder.

#### Explanation

The amendments clarify that the Board is authorized to adopt appendixes and supplements to certain Rules of Fair Practice without a requirement for membership approval.

#### Supplemental Local Rules and Amendments

~~Sec.2.~~ Subject to the approval of the Board of Governors and the provisions of Section 15A of the Act, each District Committee may adopt such supplemental local rules of fair practice and such amendments thereto, as it may from time to time deem necessary or appropriate; provided, however, that such rules of fair practice and amendments thereto shall be designed to effect the same purposes and shall be subject to the same provisions with respect to approval by members having places of business within the district as are provided in Section 1 of this Article; with respect to rules of fair practice applicable to all members. The Board of Governors, subject to the provisions of Section 15A of the Act, may at any time suspend or cancel any such local rules of fair practice or any portion of any such local rules so adopted and approved. Any District Committee, subject

to the approval of the Board of Governors and the provisions of Section 15A of the Act, may at any time suspend or cancel any local rules of fair practice or any portion of any such local rules adopted by it pursuant to this Section:

Explanation

The section has been in the By-Laws since the inception of the Association when the future structure of the Association was unknown. No local rules of fair practice have ever been adopted and the section appears unnecessary.

Power of the Board

Sec. 3 2. The Board of Governors, in the administration and enforcement of any rRules of fFair pPractice adopted under ~~Sections~~ Section 1 and 2 of this Article, shall have power to:

- (a) ~~To~~ make and issue interpretations of all such rRules of fFair pPractice;
- (b) ~~To~~ prescribe such procedure for the presentation, hearing and adjudication of complaints between or against members of the Corporation and/or persons associated with members as it deems necessary or appropriate; and
- (c) ~~To~~ prescribe maximum penalties, applicable to members, to include censure, fine, suspension, limitation of activities, functions and operations, or expulsion from membership or suspension or barring from being associated with all members, or any other fitting penalty sanction, and to prescribe maximum penalties applicable to persons associated with members to include censure, fine, suspension, limitation of activities, functions and operations, or revocation of registration, if any, or suspension or barring a person associated with a member from being associated with all members, or any other fitting penalty, sanction, for,
  - (1) breach by a member or a person associated with a member of any covenant with the Corporation or its members;
  - (2) for violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of these By-Laws, or of the Rules of Fair Practice of the Corporation, the federal securities laws including the rules and

regulations adopted thereunder, the rules of the Municipal Securities Rulemaking Board,

or

(3) failure by a member or person associated with a member to submit a dispute for arbitration under the Code of Arbitration Procedure ("Code") as required by the Code, or to fail to appear or to produce any document in their possession or control as directed pursuant to provisions of the Code, or to fail to honor an award of arbitrators properly rendered pursuant to the Code where a timely motion has not been made to vacate or modify such award pursuant to applicable law,

(4) refusal by a member or person associated with a member to abide by an official ruling of the Board of Governors or Uniform Practice Committee acting within its appropriate authority, with respect to any transaction which is subject to the Uniform Practice Code, or

~~(3)~~(5) for failure by a member or a person associated with a member to adhere to any ruling, order, direction or decision of, or to pay any penalty, fine or costs, imposed by, the Board of Governors or any District Business Conduct Committee, or for violation of any local rule of fair practice adopted by any District Committee; provided, however, that no member or person associated with a member shall be disciplined unless and until the requirements of Section 4 3 of this Article are met.

#### Explanation

The changes primarily conform to Section 15A(b)(7) of the 1934 Act, as amended by the Securities Acts Amendments of 1975, which authorizes the Association to impose disciplinary sanctions consisting of limitation of activities, functions and operations of members and associated persons. The changes also reflect statutory changes authorizing the Association to impose disciplinary sanctions based upon violations of the federal securities laws and rules and regulations thereunder. In addition, new subsections (c)(3) and (4) codify what are presently resolutions of the Board of Governors.

#### Disciplinary Proceedings

Sec. 4 3. In any proceeding under this Article, any member or person associated with a member shall be given the opportunity to have a hearing, at which hearing any such person he shall be entitled to be heard in person and/or by counsel. Such persons may

present any relevant material. In any such proceeding against a member or against a person associated with a member to determine whether the member and/or the person associated with a member shall be disciplined:

(a) specific charges shall be brought;

(b) such member or person associated with a member shall be notified of and be given an opportunity to defend against such charges;

(c) a record shall be kept; and

(d) any determination shall include ~~(A)~~ a statement setting forth

(1) any act or practice, in which such member or person associated with a member may be found to have engaged or which such member or person associated with a member may be found to have omitted;

~~(B)~~ a statement setting forth the

(2) the specific rule or rules of the Corporation, regulation or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation; ~~(C)~~ a statement whether the act or practice prohibited by such rule or rules, or the omission or any act required hereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade; and

~~(D)~~ a statement setting forth

(3) the basis upon which any findings are made, and

(4) the penalty imposed.

#### Explanation

The proposed changes are to conform to the statutory changes in Section 15A(h)(1) of the Act by which the Association is no longer required to state whether a respondent's conduct was inconsistent with just and equitable principles of trade and to reflect the Association's authority to impose disciplinary sanctions based upon violations of the federal securities laws and rules and regulations thereunder.

**Grounds for Disqualification to Participate  
in Determination of Complaint**

**Sec. 5** No member of the Board of Governors or of any District Business Conduct Committee or of any Local Business Conduct Committee shall in any manner, directly or indirectly, participate in the determination of any complaint affecting his interest or the interests of any person in whom he is directly or indirectly interested. In any case where such an interest is involved, the particular member shall disqualify himself, or shall be disqualified by the Chairman of any such Board or Committee.

Explanation

The provision has been transferred to the proposed Code of Procedure which has previously been circulated to the membership for comment and is presently on file with the Commission.

**ARTICLE XIV XI**

**Uniform Practice Code**

Authority to Adopt Code

**Sec. 1.** The Board of Governors is hereby authorized to adopt a Uniform Practice Code and amendments, interpretations and explanations thereto designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business with respect to such matters as trade terms, deliveries, payments, dividends, rights, interest, reclamations, exchange of confirmations, stamp taxes, claims, assignments, powers of substitution, computation of interest and basis prices, due-bills, transfer fees, "when, as and if issued" trading, "when, as and if distributed" trading, marking to the market, and close-out procedure all to the end that the transaction of day-to-day business by members may be simplified and facilitated, that business disputes and misunderstandings, which arise from uncertainty and lack of uniformity in such matters, may be eliminated, and that the mechanisms of a free and open market may be improved and impediments thereto removed. Such code, and any amendments thereto, if duly adopted by the Board of Governors and not disapproved

approved by the Commission pursuant to Section 15A of the Act, shall become effective as at such time as the Board of Governors may prescribe.

Explanation

The proposed changes are primarily technical and clarifying.

Administration of Code

Sec. 2 The administration of any uUniform pPractice eCode, or any amendment thereto, adopted by the Board of Governors pursuant to Section 1 of this Article, shall be vested in the Board of Governors, and the Board is hereby granted such powers as are reasonably necessary to achieve its effective operation. In the exercise of such powers, the Board may issue explanations and interpretations, ~~and may act as arbitrator or conciliator in controversies arising under or in connection with said code.~~ The Board may ~~also issue~~ and make binding rulings with respect to the applicability of the provisions of this code to situations in which there is no substantial disagreement as to the facts involved. The Board may delegate to appropriate Ecommittees such of its powers, hereunder as it deems necessary and appropriate to achieve effective administration and operation of the code.

Explanation

The change is to reflect the fact that the Board does not act as an arbitrator of disputes under the Code and render awards which are intended to be judicially enforceable. Under the Association's rules the arbitration function rests with arbitration panels which are appointed and act pursuant to the Association's Code of Arbitration Procedure.

Transactions Subject To Code

Sec. 3. All over-the-counter transactions in securities between by members, except transactions in securities which are exempted under Section 3(a)(12) of the Act or are municipal securities as defined in Section 3(a)(29) of the Act, ~~shall be~~ are subject to the pertinent provisions of the Uniform Practice Code and to the provisions of Section 2 of this Article unless exempted therefrom by the terms of the Code.

Explanation

The express exclusion from the Code for transactions in municipal securities is intended to avoid confusion by making clear that after the Securities Acts Amendments of 1975 such transactions continue to be exempt from the Code because they are now subject to the rulemaking authority of the Municipal Securities Rulemaking Board which has its own uniform practice rules.

**Authority to Adopt District Code**

**Scope - Effective Date of Code and Amendments**

**Sec. 4-** Each District Committee, after submission to the membership in its district for comment and criticism, and subject to the approval of the Board of Governors, is hereby authorized to adopt a district uniform practice code and amendments thereto, provided, however, that any such district uniform practice code and any amendment thereto shall be designed to effect the same general purposes as are provided in Section 1 of this Article with respect to any uniform practice code adopted by the Board of Governors, and shall not conflict in any way therewith. Any such district uniform practice code, and any amendment thereto, if duly adopted by the District Committee, approved by the Board of Governors and not disapproved by the Commission pursuant to Section 15A of the Act, shall become effective as at such time as the District Committee may prescribe. The Board of Governors, subject to the provisions of Section 15A of the Act, may at any time declare ineffective any such district uniform practice code or any portion thereof.

Explanation

The section has been in the By-Laws since the inception of the Association when the future structure of the Association was unknown. No local uniform practice codes have ever been adopted and the provision appears unnecessary.

**Administration of District Code**

**Sec. 5-** The administration of any district uniform practice code or any amendment thereto, adopted pursuant to Section 4 of this Article, shall be vested in the District Committee adopting same, and such committee is hereby granted such powers as are reasonably necessary to achieve effective operation. In the exercise of such powers,

a District Committee may issue explanations and interpretations, and may act as arbitrator or conciliator in controversies arising under or in connection with such district uniform practice code. A District Committee may also issue binding rulings with respect to the applicability of the provisions of such district uniform practice code to situations in which there is no substantial disagreement as to the facts involved. A District Committee may delegate to appropriate Committees such of its powers hereunder as it deems necessary and appropriate to achieve effective administration and operation of such code.

Explanation

See comment above.

Transactions Subject to District Code

Sec. 6. All over-the-counter transactions in securities between members in any district wherein a district uniform practice code is duly adopted pursuant to Section 4 of this Article, except transactions in securities exempted under Section 3(a)(12) of the Act, shall be subject to the pertinent provisions of any such district uniform practice code and to the provisions of Section 5 of this Article.

Explanation

See comment above.

ARTICLE XVI

Automated Quotations System (NASDAQ)

Definitions

Sec. 1. The term "automated quotations system" means an electronic data processing system interconnected by wire or other means with terminals which make readily available to approved subscribers, and to the general public at specific times and in appropriate summary form, the quotes of registered market makers in authorized securities.



The term "registered market maker" means a member which is willing and able to serve as such in connection with a specified authorized security and which meets the qualifications for such set forth in Schedule "D" to these By-Laws:

The term "authorized security" means a security which meets the qualifications for such set forth in Schedule "D" to these By-Laws:

#### Board Authorized to Organize and Operate

Sec. 2: The Board of Governors is hereby authorized to organize and operate automated quotations systems to provide qualified subscribers with quotations on authorized securities traded on the "over-the-counter" market. The systems may be organized and operated by a division or subsidiary company of the Corporation or by one or more independent firms under contract with the Corporation, as the Board from time to time may deem necessary or appropriate.

#### Rules, Charges, Classifications, Qualifications,

#### Requirements, Standards and Aggrievement Procedure

Sec. 3: Taking into account relevant matters including the type of business done, securities traded, and service rendered, the Board of Governors may publish operating rules for the automated quotations systems, establish reasonable qualifications and classifications for registered market makers and other subscribers, provide standards for authorized securities, and publish the charges to be collected from subscribers by the operator of automated quotations systems. Services shall be provided to members on a nondiscriminatory basis and at reasonable and uniform rates designed to encourage maximum utilization by all members, with due allowance for the geographic remoteness of members of their branch offices receiving service outside of the 48 contiguous states.

Members and other persons aggrieved by action taken or authorized by the Board of Governors in applying such qualifications, criteria, standards, and charges, or ensuing out of the operation of the automated quotations systems shall, upon filing a

complaint with the Board, be entitled to a hearing thereon (if requested), decision and review by the Board in accordance with procedures specified by the Board:

Such rules, charges, classifications, qualifications, registration requirements, standards, exceptions thereto, and aggrievement procedure shall be incorporated in Schedule D attached to and made a part of these By-Laws:

Within the limitations provided herein, the Board of Governors shall have power to adopt, alter, amend, supplement or modify the provisions of Schedule D from time to time without recourse to the membership for approval, as would otherwise be required by Article IX hereof, and Schedule D, as adopted, altered, amended, supplemented or modified, shall, become effective as the Board of Governors may prescribe unless disapproved by the Commission:

#### Explanation

The entire Article has been reworded in a shorter form and transferred to new Section 2(c) of Article VII of the By-Laws. Schedule "D" will be transferred to a new portion of the Manual. In addition, the aggrievement and other procedural provisions concerning the NASDAQ System now appearing in Schedule D have been moved to the proposed Code of Procedure which previously was sent to the membership for comment and is presently on file with the Commission for approval.

#### Lists to be Kept

Sec. 4- The Board of Governors shall keep a currently accurate and complete roll (a) of registered market makers together with a list of the authorized securities as to which each may enter quotes on the automated quotations systems; and (b) of authorized securities:

### ARTICLE XVIII

#### Reporting Transactions on Consolidated Tape

#### Authorization

Under the provisions of Rule 17a-15 adopted by the Securities and Exchange Commission under Section 17 of the Securities Exchange Act of 1934 the Corporation is required to file with the Securities and Exchange Commission a written plan meeting specified standards concerning the collection and dissemination by the

Corporation of information relating to over-the-counter transactions executed by its members in securities registered or admitted to unlisted trading privileges on an exchange. The Board of Governors is hereby authorized to adopt rules and procedures in order to carry out the Corporation's responsibilities and duties under Rule 17a-15 and implement the plan filed pursuant to the rule as it may be amended from time to time. Such rules and procedures may include, among other things:

- (1) The manner of collecting and reporting last sale information;
- (2) The standards and methods to insure the promptness, accuracy and completeness of reporting and similar matters; and
- (3) The procedures to provide that last sale information will not be reported in a fraudulent or manipulative manner.

The Board of Governors shall also have authority to use any automated quotations system established under the provisions of Article XVI of the By-Laws in any manner it deems necessary and appropriate to further the implementation and operation of any composite transaction reporting system established pursuant to Rule 17a-15. The Board of Governors shall also have authority to impose reasonable and equitable fees and changes in connection with the collection and dissemination of last sale information.

Such rules, procedures and charges shall be incorporated into Schedule G attached to and made a part of these By-Laws. The Board of Governors shall have the power to adopt, alter, amend, supplement or modify the provisions of Schedule G from time to time without recourse to the membership for approval as would otherwise be required by Article IX hereof, and Schedule G as adopted, altered, amended, supplemented or modified shall become effective as the Board of Governors shall prescribe unless disapproved by the Commission.

#### Explanation

The provisions are proposed to be moved to the Rules of Fair Practice because they prescribe a standard of member conduct.

ARTICLE XVII

Clearing and Settling of Transactions of Members  
Transactions to Be Cleared Through Facilities of  
Registered Clearing Agencies

~~Sec. 1.~~ All over-the-counter transactions in securities between members shall be cleared and settled through the facilities of a clearing agency registered with the Commission pursuant to the Securities Exchange Act of 1934 which clears and settles such over-the-counter transactions in securities; unless;

(a) the security involved in the transaction shall not have been qualified for clearance by the Board of Directors of the registered clearing agency under the standards established by the rules of the registered clearing agency;

(b) one or more of the members involved in the transaction shall not have been qualified as a clearing member by the Board of Directors of the registered clearing agency pursuant to standards established by the rules of the registered clearing agency;

(c) the rules of the registered clearing agency provide that the transaction shall not be cleared through the facilities of the registered clearing agency; or

(d) the members involved in the transaction otherwise mutually agree:

Explanation

The Article has been reworded and transferred to new Section (b)(6) of Article VII of the By-Laws.

ARTICLE VIII XII

Limitation of Powers

Prohibitions

Sec. 1. Under no circumstances shall the Board of Governors or any officer, employee or member of the Corporation have power to:

(a) To make any donation or contribution from the funds of the Corporation or to commit the Corporation for the payment of any donations or contributions for political or charitable purposes; or

(b) To use the name or facilities of the Corporation in aid of any political party or candidate for any public office.

Explanation

The changes are grammatical.

Use of Name of Corporation by Members

Sec. 2. No member shall use the name of the Corporation on letterheads, circulars or other advertising matter or literature except to the extent that may be authorized by the Board of Governors.

Unauthorized Expenditures

Sec. 3. No officer, employee, member of the Board of Governors or of any District or other Committee, shall have any power to incur or contract any liability on behalf of the Corporation not authorized by the Board of Governors. The Board may delegate to the President of the Association Corporation, or his delegate, such authority as it deems necessary to contract on behalf of the Association Corporation or to satisfy unanticipated liabilities during the period between Board meetings.

Explanation

The changes are for clarity and consistency with language in other By-Law provisions.

**ARTICLE IX XIII**

**Amendments to By-Laws**

**Procedure for Adopting Additions, Alterations or**

**Amendments to By-Laws**

Any member of the Board of Governors by resolution, any District Committee by resolution, or any twenty-five members of the Corporation by petition signed by such members, may propose ~~additions, alterations, or~~ amendments to these By-Laws. Every proposed ~~addition, alteration or~~ amendment shall be presented in writing to the Board of Governors and a record shall be kept thereof. The Board of Governors shall first pass on ~~all proposed additions, alterations or amendments to these By-Laws, and~~ first may adopt

any proposed ~~addition, alteration or amendment~~ to these By-Laws by affirmative vote of a majority of the members of the Board of Governors then in office. The Board of Governors, upon adoption of any such ~~addition, alteration or amendment~~ to these By-Laws, except as otherwise provided in these By-Laws ~~Section 2 of Article I, Section 1 of Article III, Section 1 of Article IV and Section 3 of Article XVI hereof,~~ shall forthwith cause a copy ~~thereof~~ to be sent to and voted upon by each member of the Corporation ~~to be voted upon~~. If such ~~addition, alteration or amendment~~ to these By-Laws is approved by a majority of the members voting within thirty (30) days after the date of submission to the membership, and is ~~not disapproved~~ approved by the Commission as provided in ~~Section 15A~~ of the Act, it shall become effective as of such date as the Board of Governors may prescribe.

#### Explanation

The changes are to eliminate unnecessary language and to conform to the existing Commission review authority prescribed under Section 19(b) of the 1934 Act, added by the Securities Acts Amendments of 1975.

#### **ARTICLE ~~X~~ XIV**

##### **Corporate Seal**

The corporate seal shall have inscribed thereon, the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be imposed or affixed or reproduced or otherwise.

#### **ARTICLE ~~XI~~ XV**

##### **Checks**

All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Governors may from time to time designate.

**ARTICLE XII**

**Fiscal Year**

The fiscal year shall begin the first day of October in each year.

Explanation

The provision appears unnecessary.

**ARTICLE XIII XVI**

**Annual Financial Statement**

As soon as practicable after the end of each fiscal year, the Board of Governors shall send to each member of the Corporation a reasonably itemized statement of receipts and expenditures of the Corporation for such preceding fiscal year.