

Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.30 [Sec. 8.31] The Independent Agent shall declare a ballot invalid if one or more of the following conditions exist:

(a) The ballot is not signed by the Executive Representative (unless Section 8.29 [30] applies);

(b) a vote is not indicated on the ballot; or

(c) the ballot indicates votes for more candidates than there are *positions* on the District Committee or District Nominating Committee subject to election in the election [vacancies for an office].

[Certification of] Election Results

Sec. 8.31 [Sec. 8.32] Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee or District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of *positions* [vacancies] on the District Committee or District Nominating Committee subject to election in the election. [The candidates for the office of member of the District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Nominating Committee.] In the event of

a tie, there shall be a run-off election. *The Secretary of NASD Regulation shall notify the Board of the election results.* [Each District Committee shall send a written certification of the election results to the Board.] The *notification* [certification] shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.32 [Sec. 8.33] The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Definitions

Sec. 8.33 (a) When used in Article VIII of these By-Laws, the term "Notice" means a notice in writing or by electronic transmission and the term "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) For purposes of this Article VIII, any notice by NASD Regulation, the Secretary of NASD Regulation, or the District Director given by electronic transmission shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the person entitled to notice has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the person entitled to notice has consented to receive notice; (3) if by a posting on an electronic network when the person entitled to notice has consented to receive notice in this manner, together with separate notice to the person entitled to notice of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission when the person entitled to notice has consented to receive notice in this manner, when directed to the person entitled to notice. For purposes of this Article VIII, if mailed, any such notice by NASD Regulation, the Secretary of NASD Regulation, or the District Director shall be deemed given when deposited in the United States mail, postage prepaid, directed to the person entitled to notice at such person's

address as it appears on the records of NASD Regulation.

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Article VIII of NASD Regulation By-Laws ("By-Laws") sets forth provisions relating to the operation of District Committees and District Nominating Committees (collectively, "Committees"), including specifically, provisions regarding Committee meetings, vacancies and elections. Under Article VIII, the role of the District Committee members includes serving as panelists in disciplinary proceedings in accordance with NASD Rules, recommending policy and rule changes to the Board, educating members in their district, and selecting members of the regional District Committee and District Nominating Committees in a manner consistent with Article VIII of the By-Laws. The role of the District Nominating Committee includes nominating candidates to serve on the District Committee and District Nominating Committee for that region.

Currently, there are 11 District Committees, divided by geographic region. Based on the experience of NASD Regulation staff in working with the Committees since that time, and the current practices of the Committees, NASD is proposing a series of amendments to modernize and clarify the Article VIII provisions. NASD represents that the proposed changes are designed to streamline the nomination and election processes by, among other things, centralizing the communication procedures in the Corporate Secretary's Office of NASD Regulation, revising the nomination and election timeline, and modernizing the methods of communication by permitting electronic delivery of documents. In addition, NASD represents that the proposed