

Commission received 68 comment letters on the NYSE proposal.⁵ On October 8, 2003, the NYSE filed Amendment No. 2 to the NYSE Corporate Governance Proposal.⁶ On October 20, 2003, the NYSE filed Amendment No. 3 to the NYSE Corporate Governance Proposal.⁷

On October 9, 2002, the NASD, through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Commission, pursuant to section 19(b)(1) of the Exchange Act, and Rule 19b-4 thereunder, a proposed rule change (SR-NASD-2002-141) to amend NASD Rules 4200 and 4350(c) and (d) to modify requirements relating to board independence and independent committees ("Nasdaq Independent Director Proposal"). On March 11, 2003, NASD, through Nasdaq, filed Amendment No. 1 to the Nasdaq Independent Director Proposal.⁸ On March 25, 2003, the proposed rule change, as amended by Amendment No. 1 to the Nasdaq Independent Director Proposal, was published for comment in the **Federal Register**.⁹ The Commission received 24 comment letters on the Nasdaq Independent Director Proposal.¹⁰ On July 16, 2003, Nasdaq filed Amendment No. 2 to the Nasdaq Independent Director Proposal.¹¹ On

October 10, 2003, Nasdaq filed Amendment No. 3 to the Nasdaq Independent Director Proposal.¹² On October 16, 2003, Nasdaq filed Amendment No. 4 to the Nasdaq Independent Director Proposal.¹³ On October 30, 2003, Nasdaq filed Amendment No. 5 to the Independent Director Proposal.¹⁴ On June 11, 2002, the NASD, through Nasdaq, filed with the Commission, pursuant to section 19(b)(1) of the Exchange Act, and Rule 19b-4 thereunder, a proposed rule change (SR-NASD-2002-77) to amend NASD Rule 4350(b) to add a requirement for issuers to announce publicly any audit opinions with going concern qualifications ("Nasdaq Going Concern Proposal"). On July 10, 2003, the NASD Going Concern Proposal was published for comment in the **Federal Register**.¹⁵ The Commission received no comments on the proposal.

On June 11, 2002, the NASD, through Nasdaq, filed with the Commission, pursuant to section 19(b)(1) of the Exchange Act, and Rule 19b-4 thereunder, a proposed rule change (SR-NASD-2002-80) to amend NASD Rule 4350(h) to require an issuer's audit committee or another independent body of the board of directors to approve related party transactions ("Nasdaq Related Party Transactions Proposal"). On December 30, 2002, the NASD, through Nasdaq, submitted Amendment No. 1 to the Nasdaq Related Party Transactions Proposal.¹⁶ On July 16, 2003, the proposed rule change, as

amended, was published for comment in the **Federal Register**.¹⁷ The Commission received no comments on the proposal. On October 3, 2003, the NASD, through Nasdaq, submitted Amendment No. 2 to the Nasdaq Related Party Transactions Proposal.¹⁸ On October 6, 2003, the NASD, through Nasdaq, submitted Amendment No. 3 to the Nasdaq Related Party Transactions Proposal.¹⁹

On October 9, 2002, the NASD, through Nasdaq, filed with the Commission, pursuant to section 19(b)(1) of the Exchange Act, and Rule 19b-4 thereunder, a proposed rule change (SR-NASD-2002-138) to amend NASD Rule 4350(a) to require foreign issuers to disclose any exemptions they may receive from Nasdaq's corporate governance listing standards ("Nasdaq Issuer Applicability Proposal"). On July 10, 2003, the Nasdaq Issuer Applicability Proposal was published for comment in the **Federal Register**.²⁰ The Commission received one comment letter on the Nasdaq Issuer Applicability Proposal.²¹ On August 15, 2003, the NASD, through Nasdaq, submitted Amendment No. 1 to the Nasdaq Issuer Applicability Proposal.²² On October 10, 2003, the NASD, through Nasdaq, submitted Amendment No. 2 to the Nasdaq Issuer Applicability Proposal.²³

⁵ A list of commenters on the rule proposals of the NYSE and the National Association of Securities Dealers, Inc. ("NASD"), who submitted correspondence as of October 13, 2003, is attached as Exhibit A to this order. The public files for the NYSE and NASD rule proposals, including all comment letters received on the proposals, are located at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington DC 20549-0102. See *infra*, note.

⁶ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 8, 2003 ("NYSE Amendment No. 2"). NYSE Amendment No. 2 amended portions of the proposal as described below.

⁷ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 17, 2003 ("NYSE Amendment No. 3"). In Amendment No. 3, NYSE proposed to require that the audit committee charter of a closed-end or open-end management investment company address the responsibility of the audit committee to establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters, but not to require the procedures to be set forth in the charter, as would have been required under Amendment No. 2.

⁸ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated March 11, 2003. Amendment No. 1 to the Nasdaq Independent Director Proposal replaced the original filing in its entirety.

⁹ See Securities Exchange Act Release No. 47516 (March 17, 2003), 68 FR 14451.

¹⁰ See *supra* note.

¹¹ See letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 15, 2003.

¹² See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 9, 2003. Amendment No. 3 to the Nasdaq Independent Director Proposal replaced in full the Nasdaq Independent Director Proposal and Amendment Nos. 1 and 2 thereto. See Section IV. *infra*, describing aspects of the proposed revisions.

¹³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 15, 2003. Amendment No. 4 to the Nasdaq Independent Director Proposal made several revisions to the narrative section of the previous amendment.

¹⁴ See letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 29, 2003. Amendment No. 5 to the Nasdaq Independent Director Proposal related to the proposed requirement that investment company audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters. Amendment No. 5 removed a sentence in the narrative section of the proposal that stated that the procedures would be required to be set forth in the audit committee charter.

¹⁵ See Securities Exchange Act Release No. 48123 (July 2, 2003), 68 FR 41191 ("Nasdaq Notice").

¹⁶ See letter from John D. Nachman, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated December 30, 2002.

¹⁷ See Securities Exchange Act Release No. 48137 (July 8, 2003), 68 FR 42152.

¹⁸ See letter from John D. Nachman, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 2, 2003. In Amendment No. 2 to the Nasdaq Related Party Transactions Proposal, Nasdaq proposed to (1) add language to NASD Rule 4350(h) to clarify that each issuer shall conduct an appropriate review of all related party transactions for potential conflict of interest situations, and (2) require that the rule change become effective 60 days following Commission approval.

¹⁹ See letter from John D. Nachman, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 3, 2003. In Amendment No. 3 to the Nasdaq Related Party Transactions Proposal, Nasdaq proposed that the rule change become effective on January 15, 2004.

²⁰ See Securities Exchange Act Release No. 48124 (July 2, 2003), 68 FR 41193.

²¹ See *supra* note.

²² See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 15, 2003. Amendment No. 1 replaced in full the Nasdaq Issuer Applicability Proposal. In Amendment No. 1 to the Nasdaq Issuer Applicability Proposal, Nasdaq proposed to exempt registered management investment companies, asset-backed issuers and other passive issuers, and cooperatives from most provisions of NASD Rule 4350.

²³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 9, 2003. Amendment No. 2 replaced in full the Nasdaq Issuer Applicability Proposal and Amendment No. 1