Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to securities purchased or otherwise acquired by a registered investment company if immediately after the purchase or acquisition not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and its affiliated persons and the acquiring company does not impose a sales load on its shares of more than 1.5%. In addition, no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days. The acquiring company also must vote its acquired company shares either in accordance with instructions from the acquiring company's shareholders or in the same proportion as all other shareholders of the acquired company.

3. Section 12(d)(1)(J) provides that the SEC may exempt any series of transactions from any provision of section 12(d)(1) of the Act if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicant believes that the requested relief meets the standards set forth in section 12(d)(1)(J).

4. Applicant asserts that section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company, including the excessive layering of sales charges. Applicant believes that its proposal does not present any danger of excessive sales loads. If a Portfolio determines to invest in shares of an Underlying Fund that bears sales charges or service fees, applicant states that the aggregate sales charges or service fees will not exceed the limits set forth in rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers (''NASD''). Applicant believes that it is appropriate to apply the limits on sales charges and service fees by the NASD's rules to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F). Further, as discussed above, applicant states that the Portfolios intend to structure their purchases of Underlying Funds so as to purchase most, if not all, of the Underlying Funds without incurring sales charges.

5. Applicant states that each Portfolio provides investors with the opportunity to participate in a professionally selected, diversified portfolio of investment company shares in one package and at one sales load. Applicant contends that, for many smaller investors, a packaged product may be less expensive than direct acquisition and maintenance of a comparable portfolio. Applicant submits that the convenience (such as ease of acquisition and sale), diversification, professional management, and selection of securities justify any administrative costs associated with creating such a Portfolio. Applicant also submits that Underlying Funds will benefit from the additional economies of scale resulting from the sale of a large number of shares to a Portfolio, because each Portfolio will be carried on the books as a single shareholder account.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. Any sales charges or service fees charged with respect to a class of shares of a Portfolio, when aggregated with any sales charges or service fees paid by the Portfolio with respect to securities of the Underlying Funds held by the Portfolio, will not exceed the limits set forth in rule 2830(d) of the NASD's Conduct Rules.

2. Each Portfolio will comply with section 12(d)(1)(F) in all respects except for sales load limitation of section 12(d)(1)(F)(ii).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21365 Filed 8–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Grove Property Trust, Common Stock, $.01 Par Value) File No. 1–13080

August 7, 1997.

Grove Property Trust (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is also listed on the American Stock Exchange, Inc. (''Amex'') effective May 23, 1997.

The Company has complied with the requirements of the BSE by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the BSE and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

In making the decision to withdraw its Security from listing on the BSE, the Company considered the direct and indirect costs and expenses associated with maintaining the dual listing of its Security on the BSE and the Amex. The Company does not see any particular advantage in the dual trading of its securities and believes that dual listing may fragment the market for its securities.

Any interested person may, on or before August 28, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 97–21366 Filed 8–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38908; File No. SR–NASD–97–28]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change, Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3, 4, and 5 to Proposed Rule Change Regarding Membership Application Procedures, Disciplinary Proceedings, Investigations and Sanctions Procedures, and Other Conforming Changes

August 7, 1997.

On April 18, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b-4 thereunder.[2] The Association originally proposed to amend: (1) The By-Laws of the NASD; (2) the By-Laws of NASD Regulation, Inc. (''NASD Regulation'' or ''NASDR''); (3) the By-Laws of The Nasdaq Stock Market, Inc. (''Nasdaq''); (4) the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries (''Delegation Plan''); (5) Rule 0120; (6) Rule IM–2210–4; (7) the Rule 1010 Series; (8) the Rule 8000 Series; and (9) the Rule 9000 Series.

On April 23, 1997, the NASD filed a technical amendment to the proposed rule change.[3] Notice of the proposed rule change, including Amendment No. 1, was provided by issuance of a Commission release on April 24, 1997 and by publication in the **Federal Register** on May 8, 1997.[4] On July 10, 1997, the NASD filed Amendment No. 2, pertaining to changes to the 9400 Series (Members Experiencing Financial or Operational Difficulties), the 9500 Series (Summary and Non-Summary Suspensions, Cancellation, Bar, and Limitation or Prohibition on Access to NASD Services), and the 9600 Series (Procedures for Exemptions from Certain NASD Rules). Notice of Amendment No. 2 to the proposed rule change was provided by issuance of a Commission release on July 11, 1997 and by publication in the **Federal Register** on July 16, 1997.[5] On July 11, 1997, the NASD filed Amendment No. 3 to the proposed rule change, making several clarifying changes to the investigations and sanctions, disciplinary, and member admission procedures.[6] Amendment No. 3 also withdrew the proposed amendments to the by-laws of the NASD, NASD Regulation, and Nasdaq, as well as proposed amendments to these entities' restated Certificates of Incorporation and the Delegation Plan. These documents will be amended to reflect the corporate restructuring recently approved by the NASD Board of Governors and will be submitted in a separate rule filing at a later date. On July 21, 1997, the NASD filed Amendment No. 4 to the proposed rule change making several technical, nonsubstantive amendments.[7] On August 4, 1997, the NASD filed Amendment No. 5 to the proposed rule change, which modified the timing of the effectiveness of the proposed rule change and included several technical amendments.[8] The Commission received two comment letters on the proposal.[9]

I. Introduction and Background

On August 8, 1996, the Commission issued an order (''SEC Order'') pursuant to Section 19(h)(1) of the Act. This order made certain findings about the NASD and conduct on Nasdaq and imposed remedial sanctions, including ordering the NASD to comply with certain undertakings (''Undertakings'').[10] The Commission determined that the NASD had not complied with the NASD's rules or satisfied its obligations under the Act to enforce its rules and the federal securities laws. In particular, the Commission determined that the NASD failed to thoroughly investigate certain misconduct by dealers and to take effective regulatory action. Moreover, the Commission determined that the NASD failed to enforce market makers' obligations to trade at their quotations, and report transactions on a timely and accurate basis. The Commission also determined that the NASD processed applications for membership of certain firms in a manner inconsistent with its rules.

In addition, the Commission found in its 21(a) Report, among other things, that market making firms were afforded a disproportionate representation on the boards and committees that govern the NASD, administer its disciplinary process, and operate the Nasdaq market. The Commission concluded in the 21(a) Report that market makers had unduly exerted their influence over the disciplinary process through their participation in the District Business Conduct Committees (''DBCCs'').[11] In

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 23, 1997 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 38545 (Apr. 24, 1997), 62 FR 25226 (May 8, 1997) (publishing notice of SR–NASD–97–28) (''Original Proposal'').

[5] Securities Exchange Act Release No. 38831 (July 11, 1997), 62 FR 38156 (July 16, 1997) (''Amendment No. 2'').

[6] Letter from Alden S. Adkins, General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 11, 1997 (''Amendment No. 3''). Except for technical, clarifying changes, a description of the proposed changes set forth in Amendment No. 3 regarding the investigations and sanctions, disciplinary, and member admission procedures is provided below. In addition to the NASD's proposed changes to the Original Proposal, the NASD included in Amendment No. 3 its response to the two submitted comment letters (''NASD Response''). *See also* Colish Letter and ABA Letter, *infra* note 9.

[7] Letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 21, 1997 (''Amendment No. 4'').

[8] Letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 4, 1997 (''Amendment No. 5''). Certain minor modifications to the Delegation Plan needed to ensure conformity to the changes in the rules of the NASD contained in this rule filing are set forth in Amendment No. 5 to SR–NASD–96–29, which is being temporarily approved concurrently with this filing. Securities Exchange Act Release No. 38909 (Aug. 7, 1997).

[9] Letter from Faith Colish, Attorney, Faith Colish P.C., to Jonathan G. Katz, Secretary, Commission, dated June 9, 1997 (''Colish Letter''); letter from George S. Frazza, Chair, Section of Business Law and Barry F. McNeil, Chair, Section of Litigation, American Bar Association, to Jonathan G. Katz, Secretary, Commission, dated June 17, 1997 (''ABA Letter'').

[10] Securities Exchange Act Release No. 37538 (Aug. 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3–9056. SEC, Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (Aug. 8, 1996) (''21(a) Report'').

[11] The Commission found that the DBCCs performed a ''grand jury'' function, in which the NASD staff were required to seek DBCC authorization to initiate a disciplinary proceeding.

Continued