

(ii) 0.125% of annual gross revenue from other over-the-counter securities transactions,

(iii) 0.125% of the annual gross revenue from U.S. Government securities transactions, and

(iv) With respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

Each member is to report annual gross revenue as defined in Section 5 of this Schedule, for the preceding calendar year.

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

In its filing with the Commission, the 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. The 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

Article VI of the By-Laws authorizes the NASD Board of Governors to levy fees, dues and assessments to be paid by members to defray reasonable expenses incurred in the administration of the work of the NASD. Currently, each member of the NASD is required to pay an annual gross income assessment of the greater of (i) \$850.00 or (ii) the total of 0.125% of the annual gross revenue from state and municipal securities transactions, 0.125% of annual gross revenue from other over-the-counter securities transactions, 0.125% of the annual gross revenue from U.S. Government securities transactions, and, with respect to members whose books, records, and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

The minimum gross income assessment of \$850.00 has not been changed since 1989. Due to inflationary pressures and increased regulatory costs, the NASD is proposing to raise the minimum gross income assessment from \$850.00 to \$1,200.00. The 1997 expenses of NASD Regulation are expected to grow by \$43 million or 24% as the result of various factors, including, among other things, initiatives designed to respond to the

findings by the SEC in its recent report concerning the NASD,² completion of a regulatory transition plan for the examination program, development of the new Central Registration Depository system, further implementation of the Arbitration Policy Task Force recommendations and continued development of an Order Audit Trail System. The proposed increase in the minimum gross income assessment, along with anticipated revenue growth in other areas, is expected to help defray the significant increase in regulatory costs anticipated to be incurred by NASD Regulation.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,³ which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule reasonably provides for an increase in the minimum gross income assessment to help defray the significant increase in regulatory costs anticipated to be incurred by NASD Regulation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁴ and subparagraph (e) of Rule 19b-4⁵ thereunder in that it constitutes a due, fee or other charge imposed by the Association. However, the NASD has determined to implement the rule change on January 1, 1997.

At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate

² See, Report Pursuant To Section 21(a) Of The Securities Exchange Act Of 1934 Regarding the NASD And the Nasdaq Stock Market, U.S. Securities and Exchange Commission (August 8, 1996).

³ 15 U.S.C. § 78o-3(b)(5).

⁴ 15 U.S.C. § 78s(b)(3)(A).

⁵ 17 CFR 19b-4(e).

in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principle office of the NASD. All submissions should refer to File No. SR-NASD-96-56 and should be submitted by January 27, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-860 Filed 1-13-97; 8:45 am]

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[Release No. 34-38133; File No. SR-NASD-96-57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SEC Transaction Fees

January 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.¹ The NASD has designated this proposal as one constituting a change to a due, fee, or

⁶ 17 CFR 200.30-3(a)(12).

¹ The Commission notes that the NASD filed a technical amendment to the proposal (Amendment No. 1) on January 3, 1997.

other charge under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Schedule A, Section 8 of the By-Laws of the NASD to authorize the NASD to recoup from its members SEC transaction fees assessed against the NASD pursuant to the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 and Section 31 of the Act, as amended by the National Securities Markets Improvement Act of 1996. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

Schedule A

Section 8 [Fee on Cleared Transactions] *Transaction Fees*

(a) *NASD fee on cleared transactions.* Each member shall be assessed a transaction charge of \$.0625 per 1,000 shares, with a minimum charge per side of \$.025 and a maximum charge per side of \$.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.

(b) *SEC transaction fee.* Each member shall be assessed a transaction fee of 1/300 of one percent of the aggregate dollar value of sales of covered securities transacted by or through such member. For purposes of this section, covered securities shall mean:

(i) all securities traded otherwise than on a national securities exchange (other than bonds, debentures, other evidences of indebtedness, and any sale or any class of sales of securities which the Securities and Exchange Commission may exempt from the fee imposed by Section 31 of the Securities Exchange Act of 1934, and securities described in subparagraph (ii)) that are subject to prompt last sale reporting and

(ii) effective October 1, 1997, securities registered on a national securities exchange pursuant to Section 12(b) of the Securities Exchange Act of 1934 (other than bonds, debentures, other evidences of indebtedness, and any sale or any class of sales of securities which the Securities and Exchange Commission may exempt from the fee imposed by Section 31 of the

Securities Exchange Act of 1934) traded otherwise than on such exchange.

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

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

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

Congress recently enacted the National Securities Markets Improvement Act of 1996 ("Improvement Act") and the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 ("Appropriations Act"), which together require the NASD to pay SEC transaction fees for two classes of securities generally.

Effective January 1, 1997, pursuant to the Appropriations Act, the NASD is required to pay to the Commission a fee equal to 1/300 of one percent of the aggregate amount of sales transacted by or through any NASD member otherwise than on a national securities exchange of securities (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting. This applies to securities listed on The Nasdaq Stock Market, as well as many non-Nasdaq securities traded over the counter that also are subject to NASD rules requiring the reporting of transactions within 90 seconds of execution.² On September 1, 1997, the fees are required pursuant to Section 31 of the Exchange Act, as amended by the Improvement Act, and Exchange Act Rule 31-1 thereunder.³

Effective October 1, 1997, Section 31 of the Exchange Act, as amended by the Improvement Act, will require the NASD to pay to the Commission the existing transaction fee that applies to off-exchange trades of exchange-registered securities (so-called "third market" transactions). Currently, broker-dealers pay this fee, which is equal to

1/300 of one percent of the aggregate value of off-exchange transactions in exchange-registered securities, directly to the Commission.

The SEC fees will remain at 1/300 of one percent through fiscal year 2006 pursuant to the Improvement Act. In fiscal year 2007, the fees decline to 1/800 of one percent.

The proposed amendment to Schedule A, Section 8 of the NASD By-Laws authorizes the NASD to recoup from its members the transaction fees that NASD will be required to pay to the Commission pursuant to the new legislation. As such, the proposed amendment will parallel existing practices with respect to the transaction fees that Section 31 currently imposes on national securities exchanges. It is contemplated that NASD members will be free to pass the proposed fee through to those customers whose transactions were subject to the fee, as is generally done with respect to the existing Section 31 fee on national securities exchanges.

The fees will be collected by the NASD through clearing firms that are NASD members, based on trade report information submitted into the Automated Confirmation Transaction system ("ACT") by these firms and their correspondent firms. Because the fee is assessed on each transaction, all transactions that are submitted into ACT for reporting purposes will be subject to an SEC fee, regardless of whether the transaction is a "cleared" transaction. Thus, the fee will be imposed based on reported trades rather than cleared trades. The fee is based on the reported price, exclusive of any markup or markdown.

Payment of the accumulated transaction fees to the NASD is the responsibility of NASD member clearing firms. The NASD will calculate the fees based on each transaction attributed on a monthly basis. Each clearing firm's transactions will be consolidated with all reported trades of its correspondents, and the NASD will debit each clearing firm's account at the National Securities Clearing Corporation or the Stock Clearing Corporation of Philadelphia each month. An NASD-generated invoice will be forwarded to each clearing member as confirmation of the deduction. Self-clearing firms will be billed directly and will be expected to remit payment directly to the NASD.

As noted, the fee applies to all non-debt securities subject to prompt last-sale reporting, *i.e.*, the NASD's "90 second rule."⁴ Thus, the fee applies to all securities listed on The Nasdaq Stock

² See NASD Rules 4632, 4642, and 6620. Further, as discussed herein, the fee will apply to certain transactions which currently are not required to be reported within 90 seconds of execution. See note 8 and accompanying text, *infra*.

³ See Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590 (December 30, 1996).

⁴ NASD Rules 4632, 4642, and 6620.

Market, with the exception of listed convertible debt. Therefore, the types of Nasdaq securities subject to the fees include: common, preferred, ADRs, foreign, Canadian foreign, warrants, rights, and units.

Because NASD rules also require such prompt last sale reporting for transactions involving all domestic, Canadian, and ADRs that are non-Nasdaq OTC Equity Securities,⁵ the transaction fee applies to these securities as well. This includes many securities quoted in the OTC Bulletin Board or in the National Quotation Bureau's "Pink Sheets." Conversely, foreign securities (other than Canadian securities and ADRs) that are non-Nasdaq OTC Equity Securities are not subject to the SEC fee, because NASD rules currently permit members to report transactions in these securities on the day after trade date (T+1).⁶

The fee also applies to transactions in covered securities executed outside normal hours. These transactions are reported into ACT pursuant to NASD Rules 4632(a)(4), 4642(a)(4), 6420(a), and 6620(a)(3).⁷

The NASD also will be collecting the SEC fee for odd-lot transactions and transactions effected pursuant to the exercise of an option on a covered security. The NASD notes that although these types of transactions generally are not reported into ACT, they are nonetheless subject to the SEC fee.⁸ With respect to transactions that result from the exercise of a listed option cleared through Options Clearing Corp ("OCC") where the underlying security is subject to the fee (e.g., because it is a Nasdaq security or is otherwise subject to prompt last sale reporting), the fee will be collected by OCC on behalf of the NASD. With respect to odd-lot transactions and transactions pursuant to the exercise of a conventional or "OTC" option where the underlying security is subject to the fee, there currently is no automated means to calculate and assess the fee. Therefore, for these types of transactions only, the NASD will require NASD clearing firms to account and submit payment for such activity by them and their respective correspondents on a monthly basis. Self-clearing firms also will be required to

account and submit payment for such activity on a monthly basis.⁹

Each NASD member firm will be responsible for determining whether the securities they trade are subject to prompt last sale reporting requirements, and thus subject to the transaction fee. Nonetheless, the NASD recognizes that member firms may experience difficulty in modifying their systems by January 1, 1997 to distinguish between Canadian and other foreign non-Nasdaq OTC equity securities. To assist members in determining which foreign non-Nasdaq OTC Equity Securities are subject to the transaction fee, the NASD will initially make available a list of non-Nasdaq Canadian securities on which it intends to assess the transaction fee.

The transaction fee applies to all transactions in covered securities by or through any member otherwise than on a national securities exchange, regardless of the capacity in which the member is trading. For transactions between two NASD members, the NASD generally will assess the fee on the member on the sell side. For transactions between an NASD member and a customer, the NASD will assess the fee on the NASD member.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, *inter alia*, that the NASD's rules provide for the equitable allocation of reasonable fees among members. The proposed fees are consistent with the appropriations Act and the Improvement Act, and are similar to the transaction fees that have applied to exchange transactions for many years.

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

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule

19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-96-57 and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

[FR Doc. 97-861 Filed 1-13-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38149; File No. SR-NASD-97-01]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to SelectNet Orders

January 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary,

¹¹ 17 CFR 200.30-3(a)(12).

⁵ NASD Rule 6610.

⁶ NASD Rule 6620(a).

⁷ See letter from Anne H. Wright, Associate General Counsel, NASD, to James T. McHale, Esq., Office of Market Supervision, Division of Market Regulation, Commission, dated January 6, 1997 ("Clarification Letter").

⁸ See Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590 (December 30, 1996), at footnote 27.

⁹ See Clarification Letter, *supra* note 7.

¹⁰ 15 U.S.C. 78o-3.