

provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. In light of the events of September 11, 2001, the Commission has determined to provide broker-dealers with further relief under Exchange Act Rules 15c3-1 and 15c3-3 to facilitate the orderly reconciliation of transactions in government securities. Accordingly,

It is ordered, pursuant to Section 36 of the Exchange Act, that, Broker-dealers need not consider the days October 6, 2001 through October 19, 2001, inclusive, as business or calendar days for purposes of taking deductions, when computing net capital under Rule 15c3-1 or for purposes of determining the amount of cash and/or qualified securities required to be maintained in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" in accordance with the formula set forth in Exhibit A to Rule 15c3-3 arising from aged fail transactions in government securities and unresolved reconciliation differences with accounts or clearing corporations or depositories involving government securities.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44914; File No. SR-NASD-2001-68]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., to Raise the Per Share Charge for Use of SuperSOES By Non-NASD Members

October 9, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" of "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to increase the per share charge for use of the Nasdaq National Market Executive System ("NNMS" or "SuperSOES") on a pilot basis. This rule filing applies this change to national securities trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP Exchanges"), which are not NASD members. The rule filing would become effective immediately upon approval by the Commission and would be implemented on the first day of the month immediately following Commission approval, and would remain in effect, on a pilot basis, until October 31, 2002. During the pilot period, Nasdaq will assess the effect of the rule change on market participants and Nasdaq and may file additional changes to the level or structure of its fees.³ The text of the proposed rule change is set forth below. Proposed new language is underlined; proposed deletions are in brackets.

* * *

7010. System Services

(a)-(h) No change.

(i) Transaction Execution Services

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES)

The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—\$0.10 per order entry (entering party only)

Per Share Charge—\$0.001 per share executed for all fully or partially executed orders (entering party only)

Cancellation Fee—\$0.25 per order cancelled (canceling party only)

For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only).

* * *

³ Nasdaq also filed a companion rule filing (SR-NASD-2001-67) to apply the same rule change to NASD members and to introduce a liquidity provider rebate available to NASD members. See Securities Exchange Act Release No. 44910 (October 5, 2001). SR-NASD-2001-67 is effective upon filing, and Nasdaq will implement it for a pilot period commencing on November 1, 2001 and ending on October 31, 2002.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

On January 14, 2000, the Commission issued an order approving a rule change that: (1) Established the NNMS, a new platform for the trading of Nasdaq National Market ("NNM") securities; (2) modified the rules governing the use of SelectNet for trading NNM issues; and (3) left unchanged trading of Nasdaq SmallCap securities through the Small Order Execution System ("SOES") and SelectNet.⁴ Nasdaq began implementing these system changes on July 9, 2001 and completed implementation on July 30, 2001. Through these changes, the NNMS has become the primary trading platform for NNM securities, and SelectNet is intended to be used primarily for the transmittal and execution of "non-liability" orders for market makers in NNM securities, as well as the transmittal and execution of "liability" order to market participants that do not participate in the automatic execution functionality of the NNMS. On September 28, 2001, Nasdaq filed modifications to the pricing structure for SelectNet and the NNMS.⁵ These changes were designed as an interim modification to being the process of aligning the charges to market participants for using the NNMS and SelectNet more closely with the costs of providing these services and the benefits that they provide to market participants. In this filing, Nasdaq is

⁴ Securities Exchange Act Release No. 42344 (Jan. 14, 2000), 65 FR 16 (Jan. 25, 2000) (SR-NASD-99-11).

⁵ See Securities Exchange Act Release No. 44899 (October 2, 2001) (File No. SR-NASD-2001-63) and Securities Exchange Act Release No. 44898 (October 2, 2001) (File No. SR-NASD-2001-64) SR-NASD-2001-63 applied the new fees to NASD members, effective upon filing, and was implemented on October 1, 2001. SR-NASD-2001-64 will apply the new fees to UTP Exchanges, and will be implemented on the first day of the month immediately following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

increasing the per share charge for orders entered and executed in the NNMS from \$0.001 per share to \$0.002 per share, in keeping with Nasdaq's ongoing efforts to align charges with costs and benefits.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,⁶ which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,⁷ which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the level of fees charged to market participants under the proposal is reasonable. Nasdaq anticipates that overall fees for the NNMS, SelectNet, and SOES, net of the liquidity provider rebate, will be comparable to overall fees for the NNMS, SelectNet, and SOES under the pricing changes contained in SR-NASD-2001-63⁸ and SR-NASD-2001-64.⁹ Such fees are, in turn, estimated to be slightly lower than overall fees for SelectNet and SOES prior to the introduction of the NNMS.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Nasdaq did not solicit or receive written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-68 and should be submitted by November 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44915; File No. SR-NASD-2001-65]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Pilot Term of the Nasdaq International Service and the Effectiveness of Nasdaq International Service Rules

October 9, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October

2, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.³

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

The NASD proposes to extend for one year (1) the pilot term of the Nasdaq International Service ("Service"), and (2) the effectiveness of certain rules ("International Rules") that are unique to the Service. This rule change does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 9, 2001. With this filing, the pilot period for the Service and the International Rules would be extended until October 9, 2002.

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 III below. The Exchange 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

The NASD proposed to extend for an additional year, until October 9, 2002, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The Commission originally approved the

³ The Commission made a typographical and formatting change at the request of the NASD. The changes are reflected in this notice. Telephone discussion between Peter R. Geraghty, Associate General Counsel, Nasdaq, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (Oct. 5, 2001).

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ See SR-NASD-2001-63, *supra* note 5.

⁹ See SR-NASD-2001-64, *supra* note 5.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.