proposing to delete the footnote to NASD Rule 6130(d)(6), thereby requiring all exempt market makers to mark their ACT reports to denote when they have relied on the market maker exemption.[7] In this connection, the NASD also notes that SEC staff has expressed preliminary concerns with the fact that the NASD's short sale rule does not apply uniformly to all market participants by virtue of the market maker exemption. As a result, to justify retention of the market maker exemption, SEC staff has indicated that the NASD must, among other things, conduct a thorough analysis of the use and effects of the market maker exemption.

The NASD believes the short-sale information that would be gathered upon approval of this rule filing would be a necessary and critical component of such an analysis of the market maker exemption.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that requiring exempt market makers to mark their ACT reports to denote when they have relied on the market maker exemption will help to enhance the ability of NASD Regulation, Inc. to monitor whether market makers are abusing the exemption and facilitate the NASD's ability to examine the market impacts of the market maker exemption from the short sale rule.

[7] In this connection, consistent with SEC statements regarding the intraday netting obligations of firms under SEC Rule 3b–3, the NASD notes that it will be permissible for firms to conduct a ''firm-wide netting'' of long and short positions once a day. Accordingly, the NASD believes it would be permissible for a Nasdaq trading desk to receive a stock position report at the opening and net those trades effected by the Nasdaq trading desk against this position throughout the day to determine whether particular sale was long or short. Of course, if a firm has developed the capability to continuously net its positions throughout that day, that firm would have to rely on such updated position reports to determine whether a particular sale was long or short. *See* Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949, 17950.

[8] 15 U.S.C. § 78o–3(b)(6).

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

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the proposes of the Act.

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

Comments were neither solicited nor received.

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

The NASD requests that the proposed rule change be approved on an accelerated basis. The NASD believes that good cause exists to accelerate approval of the proposal because of the NASD's need to commence capturing exempt sales by exempt market makers through ACT for a sufficient time in advance of the expiration of the pilot program for the rule on October 1, 1997. With the information collected, the NASD's Economic Research Department can conduct a meaningful and statistically significant study on, among other things, the market impact of the market maker exemption from the rule.

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, NW., Washington, DC 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 principal office of the NASD. All submissions should refer to File No. SR–NASD–96–52, and should be submitted by January 27, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[9] 17 CFR 200.30–3(a)(12) (1996).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–149 Filed 1–3–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38091; File No. SR–NASD–96–55]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to Primary Market Maker Standards

December 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 23, 1996, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''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, a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), proposes to temporarily waive NASD Rule 4612, regarding primary Nasdaq market maker standards for the remainder of the current pilot period of the Nasdaq Short Sale Rule[2] or until new primary market maker standards can be devised.

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.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] On November 1, 1996, the Commission extended the pilot period of the NASD Short Sale Rule through October 1, 1997. Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (or approving on an accelerated basis an extension to the NASD's Short Sale Rule through October 1, 1997).

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

Nasdaq has evaluated its existing qualification criteria in the primary market maker standards rule, Rule 4612 (a) and (b), in light of the new SEC rules regarding a Nasdaq market maker's order handling obligations (''Order Handling Rules'').[3] Nasdaq strongly believes that because of the potential changes in quotation and trading activity in Nasdaq securities when the Order Handling Rules become effective, the existing numerical criteria used to qualify a registered market maker as a primary market maker will be significantly affected. Because the precise effects on market maker quotes and trades are not possible to predict until Nasdaq can develop practical experience with new patterns of activity under the Order Handling Rules, Nasdaq believes that it should attempt to minimize the possible harmful unintended consequences that could occur by leaving the current standards in place. Accordingly, Nasdaq believes that the existing standards should be temporarily suspended on the same schedule for the phase in of the Order Handling Rules which commence on January 10, 1997.

Under existing Rule 4612, a registered Nasdaq Market Maker may be deemed to be a primary market maker in national market securities if the market maker meets two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify as a primary market maker if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock. The review period for meeting any of these criteria is one calendar month.

Commencing on January 10, 1997,[4] the Order Handling Rules will go into effect. These new rules will require Nasdaq market makers to change their quotes when they are in receipt of customer limit orders that improve upon their current quotations. Furthermore, under newly refined best execution principles enunciated by the SEC, market makers will be required to execute orders under different circumstances from today. Finally, entities that are not market makers, (*e.g.*, electronic communication networks (''ECNs'')), will participate in Nasdaq and may have a substantial impact on quotations and executions. Nasdaq believes that each of the current criteria will be affected. For example, as to the 102% of average dealer spread test, dealer quotes will not be driven not merely by the market maker's proprietary interests, but also the interests of customers that place limit orders with the market maker. Under the new rules, a quote of a market maker driven by a customer limit order will be indistinguishable from that of a quote driven by a customer order. In addition, the test regarding the percentage of time in which the market maker's quote is at the inside will also be driven to some extent by customer limit order interest. Further, because ECNs will be able to drive the inside price, the parameters for this factor may need to be reevaluated. Finally, Nasdaq believes that the ''quote change to executed trade ratio test'' will also be affected by customer limit orders which may be changed or cancelled by the customer without the market maker being involved in an execution. At this time, however, Nasdaq believes it is virtually impossible to predict with any accuracy precisely how market makers will change their quotation and execution patterns.

Because of this uncertainty, Nasdaq believes that it is in the public investor's best interests to temporarily suspend the operation of the primary market maker standards that currently exist. If the standards are not suspended, and there is a significant shift in the patterns of quotation and executions, Nasdaq believes that market makers operating under the existing standards and earning the primary market maker designation could conceivably lose that status. Nasdaq believes that loss of the designation would mean that market makers without the designation would not be permitted to avail themselves of the short sale exemption for primary market makers. If a significant number of registered market makers were to lose the short sale exemption, or if a single market maker that handled a significant portion of the order flow in a security were to lose the exemption, Nasdaq believes liquidity in that particular stock could be seriously harmed.

Therefore, Nasdaq is proposing that starting on February 1, 1997, any market maker making a market in any of the initial 50 stocks selected for the first phase of implementation of the Order Handling Rules on January 10, 1997, will be able to avail itself of the short sale exemption for qualified market makers found in Rule 3350(c)(1). Similarly, Nasdaq proposes that as stocks are phased in to the new Order Handling Rules, any registered market maker in the stock would be deemed to be qualified for purposes of the short sale qualified market maker exemption.

In seeking to temporarily suspend the use of the primary market maker qualification criteria, Nasdaq believes that the suspension of the criteria is an appropriate balance between the need for limitations on the market maker short sale exemption and the potential for loss of liquidity and market disruption in a period when new patterns and practices of trading are first being developed. Nasdaq believes that the period of time in which the Order Handling Rules are first being implemented may be a period of uncertainty for market makers and investors alike and that the prudent course of action would be to identify and eliminate as many potential areas for increasing that uncertainty as possible. Nasdaq has identified this issue as a critical area of uncertainty and believes that the suspension of the market maker qualification standards on a temporary basis is an appropriate market quality response. Nasdaq believes that this relief will enable Nasdaq market makers to better satisfy investor liquidity demands and could help to promote pricing efficiency.

Nasdaq also plans to develop new standards as soon as practicable after the Order Handling Rules become effective and Nasdaq can obtain experience with the manner in which the new rules affect market makers. Nasdaq plans to obtain the data from January and discuss the practices among staff and with the Quality of Markets Committee.

Nasdaq believes that the proposed rule change is consistent with Section

[3] These rules include Rule 11Ac1-4, the customer limit order display rule and amended Rule 11Ac1-1, amendments to the firm quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks. *See* Securities Exchange Act Release No. 37619 (September 6, 1996); 61 FR 48290 (Order Handling Rules Adopting Release).

[4] Nasdaq has requested relief from the January 10, 1997 commencement date of the Order Handling Rules. Nasdaq seeks to commence compliance with the rules on January 13, 1997, because of concerns that it would pose an untenable system change risk to attempt to rush the introduction of new trading system software during the trading week. If the SEC grants the relief sought, the commencement date for this proposed rule change would also be January 13, 1997. Thus, in the course of the filing on this proposed rule change, while Nasdaq refers to January 10, 1997, as the commencement date, if the SEC grants the relief requested, the actual implementation date would be January 13, 1997.

15A(b)(6) of the Act[5] in that it is designed to prevent fraudulent and manipulative acts and facilitates transactions in securities. In particular, Nasdaq believes this temporary amendment to the existing rule should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. Nasdaq further believes the proposed rule change should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

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

Nasdaq 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

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2)[6] for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. The date that the Order Handling Rules go into effect and Nasdaq must make system changes to accommodate the new regulatory requirements is January 10, 1997. Because Nasdaq believes that market makers must be provided with information regarding the exemption from the short sale rule as soon as possible before February 1, 1997, Nasdaq requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register. The alternative is potential confusion and market disruption as market makers may be unsure about whether they are in fact eligible to sell short in the course of their market making activities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(2).

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 principal office of the NASD. All submissions should refer to File No. SR–NASD–96–55, and should be submitted by January 16, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–150 Filed 1–3–97; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38084; File No. SR–NASD–96–48]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to: (1) Rule 4770 of the SOES Rules, Regarding the Fees Charged for Executions and Cancellation of Orders Entered in SOES, and (2) Rule 7010, Related to Charges for Orders and Cancellation of Orders Entered Into SelectNet

December 24, 1996.

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 December 16, 1996, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''), The Nasdaq Stock Market, Inc., (''Nasdaq''), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), is herewith filing a proposed rule change to amend: (1) Rule 4770 of the Small Order Execution System (''SOES'') Rules, regarding the fees charged for executions and cancellation of orders entered in SOES, and (2) Rule 7010, related to charges for orders and cancellation of orders entered into SelectNet. Nasdaq has requested that the Commission approve the proposed rule change on an accelerated basis. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

Rule 4700 Small Order Execution System (SOES)

* * * * *

Rule 4770.

[A fee of $.005 per share shall be assessable to SOES Market Makers for all transactions executed through SOES provided, however, that the minimum charge per execution shall be $.50 and the maximum charge per execution shall be $1.00.]

(a) A fee for orders executed through SOES shall be assessed, to be allocated as follows: the SOES Market Maker executing the order shall be assessed $0.50 per transaction and the SOES Order Entry Firm of SOES Market Maker entering the order shall be assessed $0.50 per order.

(b) For each order entered by a SOES Order Entry Firm of a SOES Market Maker that is cancelled, the SOES Order Entry Firm or SOES Market Maker that cancels such order shall be assessed a fee of $0.25.

* * * * *

Rule 7000 Charges for Services and Equipment

* * * * *

Rule 7010 System Services

(a)–(d) No changes.

(e) SelectNet Service.

The following charges shall apply to the use of SelectNet:

Transaction Charge—$2.50/side

Cancellation Fee—$.25/per order